(17,575.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1899.

No. 461.

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J. L. LOMBARD, E. A. CUMMINGS, W. H. DOBLE, ET AL., PLAINTIFFS IN ERROR,

*vs.*

THE WEST CHICAGO PARK COMMISSIONERS.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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INDEX.


| | Original. | Print |
|---|---|---|
| Writ of error | *a* | 1 |
| Certificate of lodging copy of writ of error | *c* | 2 |
| Citation and service | *d* | 2 |
| Certificate of lodging copy of citation | *e* | 3 |
| Clerk's certificate and return to writ of error | *f* | 3 |
| Caption | 1 | 3 |
| Transcript from county court of Cook county | 2 | 4 |
| Caption | 2 | 4 |
| Petition | 3 | 4 |
| Assessment-roll | 12 | 8 |
| Order granting leave to sign amended roll, &c. | 18 | 12 |
| Order fixing time to object to confirmation | 18 | 12 |
| Objections to confirmation | 19 | 12 |
| Schedule of lands | 20 | 13 |
| Motion to cancel assessment | 28 | 16 |
| Certificate of publication | 30 | 17 |
| Special assessment notice | 32 | 18 |
| Affidavit of posting notices | 33 | 19 |
| Commissioners' affidavit | 35 | 20 |
| Order confirming assessment except where objections have been filed | 37 | 21 |


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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 7, 1900.

| | Original. | Print. |
|---|---|---|
| Amendment to objections | 40 | 22 |
| Amendment to motion to cancel assessment | 42 | 23 |
| Order granting leave to sign assessment-roll | 44 | 23 |
| Order sustaining objections | 45 | 24 |
| Allowance of appeal, &c. | 45 | 24 |
| Order entering motion for rehearing | 46 | 24 |
| Order overruling motion for rehearing | 46 | 24 |
| Allowance of appeal, &c. | 47 | 24 |
| Order re-entering default order, &c. | 47 | 25 |
| Order reinstating cause, &c | 48 | 25 |
| Additional objections | 49 | 25 |
| Stipulation waiving jury, &c. | 52 | 27 |
| Amendment to petition | 54 | 27 |
| Motion to cancel assessment | 54 | 28 |
| Order confirming assessment as to certain property | 58 | 29 |
| Order overruling objections and confirming assessment | 61 | 31 |
| Allowance of appeal | 67 | 33 |
| Order of substitution | 68 | 34 |
| Appeal bond | 70 | 35 |
| Bill of exceptions | 73 | 36 |
| Stipulation as to use of original bill of exceptions | 74 | 36 |
| Schedule of property | 75 | 37 |
| Additional objections | 77 | 38 |
| Stipulation waiving jury, &c. | 79 | 39 |
| Motion to dismiss | 80 | 39 |
| Ordinance of March 28, 1893 | 84 | 41 |
| Exhibit A—Plats | 90 | 43 |
| Exhibit B—Specifications | 92 | 43 |
| Ordinance of August 4, 1896 | 109 | 50 |
| Resolution adopting estimate | 111 | 51 |
| Estimate of cost of improvement | 112 | 51 |
| Objections to evidence | 114 | 52 |
| Motion to dismiss | 115 | 52 |
| Motions to strike out, &c. | 116 | 53 |
| Testimony of Edmund A. Cummings (omitted in printing) | 117 | — |
| George Birkhoff, Jr. ( " " ) | 131 | — |
| Henry B. Fargo ( " " ) | 144 | — |
| Christian F. Schultz ( " " ) | 176 | — |
| Josiah L. Lombard ( " " ) | 199 | — |
| Portion of judgment of confirmation | 209 | 54 |
| Exhibit 1—Agreement of Lombard, May 25, 1894 (omitted in printing) | 217 | — |
| Testimony of Nathan G. Moore (omitted in printing) | 220 | — |
| Petition of Lombard, filed January 21, 1893 (omitted in printing) | 221 | — |
| Exhibit 2—Final decree in Lombard *vs.* Briggs *et al.* (omitted in printing) | 232 | — |
| Exhibit 3—Second decree in Lombard *vs.* Briggs *et al.* (omitted in printing) | 243 | — |
| Final decree in Lombard *vs.* Briggs *et al.* (omitted in printing) | 244 | — |
| Testimony of Josiah L. Lombard (recalled) (omitted in printing) | 253 | — |

| | Original | Print |
|---|---|---|
| Testimony of George W. Dorr ....(omitted in printing).. | 262 | — |
| Maggie B. Magee.....( " " ).. | 284 | — |
| George W. Dorr (recalled) (omitted in printing) | 285 | — |
| Exhibit A—Plat.....(omitted in printing).. | 306 | — |
| Original petition | 310 | 54 |
| Order of confirmation | 320 | 59 |
| Testimony of Josiah L. Lombard (recalled) (omitted in printing) | 343 | — |
| Testimony of J. W. Mott .....(omitted in printing).. | 345 | — |
| Oscar F. Brady .....( " " ).. | 350 | — |
| George F. Talty.....( " " ).. | 365 | — |
| Francis A. Barnes....( " " ).. | 366 | — |
| Wm. L. Hoerber.....( " " ).. | 377 | — |
| George F. Talty.....( " " ).. | 378 | — |
| Dillon B. Hutchinson ( " " ).. | 381 | — |
| Charles D. Cole .....( " " ).. | 401 | — |
| Diagrams.....( " " ).. | 403 | — |
| Testimony of George F. Talty (recalled) (omitted in printing) | 405 | — |
| Testimony of George W. Dorr (recalled) (omitted in printing) | 419 | — |
| Motions overruled and exceptions | 420 | 68 |
| Motion for new trial | 422 | 69 |
| Motion in arrest overruled | 422 | 70 |
| Order of confirmation entered | 423 | 70 |
| Allowance of appeal | 423 | 70 |
| Judge's certificate to bill of exceptions | 423 | 70 |
| Clerk's certificate to transcript | 424 | 70 |
| Assignment of errors | 425 | 71 |
| Order taking cause under advisement | 429 | 73 |
| Judgment of reversal | 430 | 74 |
| Motion to strike petition for rehearing | 432 | 74 |
| Order allowing petition for rehearing | 433 | 75 |
| Order granting leave to Mary Prescott to file brief | 434 | 75 |
| Order taking cause under advisement | 435 | 75 |
| Judgment of affirmance | 436 | 76 |
| Opinion | 438 | 77 |
| Petition for writ of error | 452 | 85 |
| Assignment of errors | 453 | 86 |
| Order allowing writ of error | 456 | 87 |
| Bond on writ of error | 457 | 88 |
| Stipulation to omit parts of record in printing | 460 | 89 |

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the State in which a decision could be had in the said suit between J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, plaintiffs in error, and The West Chicago Park Commissioners, defendants in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

b

The Seal of the Circuit Court of the United States, South'n Dist. Ill.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the eighth day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES T. JONES,
*Clerk of the Circuit Court of the United States for the Southern District of Illinois.*

Allowed by—

JAMES H. CARTWRIGHT,
*Chief Justice of Supreme Court of Illinois.*

c In the Supreme Court of Illinois.

EDMUND A. CUMMINGS ET AL.
*vs.*
WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the 15th day of November, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 16th day of November, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
*Clerk of Supreme Court.*

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 16, 1899. C. M.]

d UNITED STATES OF AMERICA, *ss:*

To the West Chicago Park Commissioners, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, chief justice of the supreme court of the State of Illinois, this 11th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. CARTWRIGHT,
*Chief Justice of Supreme Court of Illinois.*

Service of the above citation and receipt of a copy thereof admitted this 14th day of November, A. D. 1899.

FRANCIS A. RIDDLE,
H. S. MECARTNEY,
*Solicitors of Record for West Chicago Park Commissioners, Defendants in Error and Appellees in Supreme Court of State of Illinois.*

e In the Supreme Court of Illinois.

EDMUND A. CUMMINGS ET AL. vs. WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the 15th day of November, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing citation and acceptance of service was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this 16th day of November, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
*Clerk of Supreme Court.*

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 16, 1899. C. M.]

f In the Supreme Court of Illinois.

EDMUND A. CUMMINGS ET AL. vs. WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to four hundred fifty-nine (459), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 16th day of November, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
*Clerk of Supreme Court.*

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 16, 1899. C. M.]

1 At a supreme court begun and held at Springfield on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the fifth day of October, A. D. 1898, there was filed in the office of the clerk of the said court a certain transcript of the record and proceedings of the county court of Cook county; which said transcript of record is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
*County of Cook,* }

Pleas before the Honorable William T. Hodson, county judge of Jo Daviess county, presiding as judge of the county court of Cook county at the request and in the absence of the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 9th day, of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-second.

Present: The Honorable William T. Hodson, acting judge of the county court of Cook county; James Pease, sheriff of Cook county.
Attest: PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, to wit, on the 28th day of August, in the year of our Lord one thousand eight hundred and ninety-six, the same being one of the days of the August term of the county court of Cook county, there was filed with the clerk of said court a certain petition in words and figures as follows, to wit:

3 STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County.

To the Honorable Orrin N. Carter, judge of said court:

Your petitioners, West Chicago Park Commissioners, respectfully show that said commissioners are park commissioners and corporate authorities for park purposes for the town of West Chicago, and that they have been appointed as such under and in pursuance of acts of the General Assembly of the State of Illinois, which have been submitted to the legal voters of said town and by them adopted for the purpose of locating, establishing, enclosing, improving, and maintaining public parks, boulevards, driveways, and highways, and duly authorized to perform and discharge such duties as are by law imposed upon such authorities.

That your petitioner, in pursuance of said authority conferred upon it, did locate a boulevard or pleasureway in said town of West Chicago, known as Douglas boulevard (or Douglas Park boulevard), extending from the southeasterly boundary of Garfield park to the

western boundary line of Douglas park, said two parks and said boulevard being under the jurisdiction, control, and authority of your petitioner.

4 And your petitioner further shows that, desiring to improve said Douglas boulevard from the southeasterly line of Garfield park to the western line of Douglas park, it did carefully designate the line of said improvements, and did prepare a plan or plans thereof, and did prepare an estimate of the cost of such contemplated improvement, together with specifications therefor, and did transmit such plan, specifications, and estimates to the supervisor, assessor, and clerk of the said town of West Chicago, in which said boulevard is located, said officers being the corporate authorities duly designated by an act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1, 1873, as the corporate authorities of said town to make a special assessment for the purpose of paying the cost of such contemplated improvement of said boulevard; that your petitioner was requested and authorized to undertake and proceed with said improvement by a petition, duly made in writing, by the owners of a majority of the land frontage on the proposed improvement, as required by said act of May 2, 1873.

5 Your petitioner further shows that upon the transmission and presentation of said plans, specifications, and estimates the corporate authorities of said town designated by said statute, at a special meeting called for that purpose and held at the office of said town of West Chicago on March 28, A. D. 1893, determined by ordinance, duly adopted and passed by said authorities, that such improvements as were described in the plans, specifications, and estimate so transmitted to said corporate authorities of said town should be made, and that the expense of such improvement should be raised wholly by special assessment upon the property, lots, and lands fronting and abutting upon said Douglas boulevard, as aforesaid; that thereafter, on April 7, A. D. 1893, a petition was filed in this honorable court by said town of West Chicago, reciting said proceedings and ordinance and praying that commissioners to assess the cost of said improvement on the property benefited might be appointed (case No. 10655), and for such farther proceedings as might be necessary to properly levy and collect said special assessment; that thereafter commissioners were duly appointed, an assessment-roll was duly made and filed as prayed in said petition, and on the 12th day of May and on the 8th day of July, 1893, orders were entered in said cause confirming said assessment-roll; that thereafter various lot-owners made

6 payments on various lots so assessed in said roll and a large portion of said assessments were collected; that various lot-owners so assessed have failed, declined, and refused to pay their assessments, and so a large portion of such assessment remains uncollected.

Your petitioner further shows that after said confirmation orders the owners of certain property assessed in said roll *served* out a writ of error from the supreme court of Illinois, seeking to annul the confirmation of said special assessment, and thereafter the said cause was heard in the said supreme court, and the said court, after considering the same, and on the 28th day of March, A. D. 1896, ordered that said cause be reversed and remanded for further proceedings and with certain directions, and held that said ordinance for the making of said improvement was void, because it illegally provided that said assessment should be divided into installments, and that said judgments of confirmation were null and void; wherefore the provisions of said ordinance and said special assessment proceedings have failed; that in consequence thereof all attempts to collect said assessments have been abandoned by petitioners by resolution duly entered on its records.

7 Your petitioner further shows that by reason of the special assessment proceedings aforesaid for the purpose of paying for said improvement having so been declared null and void, and the said provisions thereof having failed, your petitioner is desirous and hereby petitions said court that a new special assessment for the cost of said improvement on property benefited may be levied, and that all lots, blocks, tracts, or parcels of land found benefited by the same shall pay for the said benefits.

Your petitioner further shows that on the 14th day of July, A. D. 1896, in pursuance of its desire and purpose to have made, levied, and collected a new special assessment for the cost of said improvement, it passed the following ordinance:

An ordinance for a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook, and State of Illinois.

Be it ordained by the West Chicago park commissioners in regular meeting assembled:

8 SEC. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates made and transmitted by said West Chicago park commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate

authorities of said town of West Chicago, in the county court of Cook county, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case number 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said
9 county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore, and on the 28th day of March, A. D. 1896, declared void by the supreme court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included an asphalt roadway, and a granite macadam roadway, concrete sidewalks, and concrete combined curb & gutter, earth filling, grass plats, trees, catch-basins, & connections and superintendence of work: now

Therefore, be it ordained:

SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed for, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

10 SEC. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SEC. 4. This ordinance shall be in force from and after its passage.

Your petitioner further shows that afterwards and on the said 14th day of July, A. D. 1896, said commissioners also made an estimate of the cost of said improvement, and a report thereof was entered upon their records, and that the said estimate and order adopting and spreading the same upon the record are as follows:

"Be it resolved and ordered that the following estimate be adopted as the estimate of this board of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby, directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost of said improvement in accordance with the act in said ordinance mentioned.

*Estimate of Cost of Improvement and Report Thereon.*

11 The following is an estimate made by the West Chicago park commissioners of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, said estimate being made in pursuance of an ordinance of the West Chicago park commissioners passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement; which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners relating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

*Estimate.*

| | |
|---|---|
| Asphalt paving | $110,420.71 |
| Macadam paving | 35,087.81 |
| Combined curb and gutter | 28,045.34 |
| Cement sidewalk | 24,262.26 |
| Filling | 17,290.20 |
| Trees | 1,110.30 |
| Catch-basins and connections | 3,819.59 |
| Gas-lamp connections | 2,106.00 |
| 12 Manhole covers, sand, cement, brick, pipe, general labor, teaming, engineering, surveying, and inspection | 19,770.51 |
| Expense of making and levying this assessment | 7,287.59 |
| Total cost of improvement | $250,207.20" |

Wherefore this petitioner prays that the cost of said improvement may be assessed in the manner provided by law and in accordance with the said act approved June 24 and in force July 1, A. D. 1895.

WEST CHICAGO PARK COMMISSIONERS,
By E. T. NOONAN, *Its Attorney.*
H. S. McCARTNEY, *Counsel.*

And afterwards and on, to wit, the 29th day of August, 1896, a certain assessment-roll was filed in said cause; which assessment-roll was in words and figures as follows, to wit:

*Assessment-roll.*

Assessment-roll made by the West Chicago park commissioners and filed in the county court of Cook county for the special
13 assessment of the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard)

from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, Cook county, Illinois, showing a description of real estate deemed by said commissioners specially benefited by said completed improvement, and also showing a description of each lot, block, tract, or parcel of land, and the total amount assessed by said commissioners as special benefits thereto, the names of the respective owners thereof, so far as known; showing also the credit to which each lot, block, tract, or parcel of land so specially assessed is entitled to, if any, for or on account of payments on previous assessments or installments thereof and the net amount of benefits assessed thereon; also showing the amount found by said commissioners as public benefit and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners:

| 14 Name of owner so far as known. | Description. Sublot. | Lot. | Block. | Total amount of benefits assessed. | Credit by payments on previous assessments or installments thereof. | Net amount of benefits assessed. |
|---|---|---|---|---|---|---|
| Lambert Tree's subdivision of the W. ½, N. W. ¼, sec. 14, T. 39, R. 13. | | | | | | |
| Lambert and Anna J. Tree | ... | .... | 17 | 3,878 33 | 765 00 | 3,113 33 |
| Vance's Garfield Boulevard addition to Chicago, a subdivision of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, sec. 14, T. 39, R. 13. | | | | | | |
| J. W. Powell | 28 | "A" | 2 | 676 66 | 276 08 | 400 58 |
| D. S. Goodwin's subdivision in N. W. ¼ N. E. ¼ sec. 23, town 39, range 13. | | | | | | |
| E. A. Cummings & Co | .... | 31 | 5 | 416 66 | 56 66 | 360 00 |
| Do. | .... | 32 | .... | 416 66 | 56 66 | 360 00 |
| Do. | ... | 33 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 34 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 35 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 36 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 37 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 38 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 39 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 40 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 41 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 42 | .. | 416 66 | 56 66 | 360 00 |
| Do. | .... | 43 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 45 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 46 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 47 | .... | 416 66 | 56 66 | 360 00 |
| Do. | .... | 48 | .... | 375 00 | 56 66 | 319 34 |
| Subdivision of W. ½ N. ½ W. ½ E. ½ S. W. ¼ sec. 14, T. 39, R. 13. | | | | | | |
| W. H. Dobble | ... | 15 | .... | 833 33 | 340 00 | 493 33 |
| Katie Triplet | .... | 17 | .... | 833 33 | 100 00 | 733 33 |
| Prescott's Douglas Park addition to Chicago, in sec. 23, T. 39, R. 13. | | | | | | |
| Moses J. Wentworth | 14 | 2 | 1 | 678 33 | 138 38 | 539 95 |
| Do. | 14 | 2 | 2 | 678 33 | 138 38 | 539 95 |
| John B. Scully | 21 | 2 | 2 | 416 66 | 85 00 | 331 66 |
| Moses J. Wentworth | 22 | 2 | 2 | 416 66 | 85 00 | 331 66 |
| Do. | 23 | 2 | 2 | 416 66 | 85 00 | 331 66 |
| Prescott's Douglas Park addition to Chicago, a subdivision of blocks 1, 2, 5 and 10, in circuit court partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of sec. 23, town 39, range 13. | | | | | | |
| Moses J. Wentworth | 1 | 2 | 5 | 678 33 | 138 38 | 539 95 |
| Thomas J. Gilmore | 2 | 2 | 5 | 416 66 | 127 50 | 289 16 |
| Do. | 3 | 2 | 5 | 416 66 | 85 00 | 331 66 |
| Do. | 4 | 2 | 5 | 416 66 | 85 00 | 331 66 |
| Do. | 5 | 2 | 5 | 416 66 | 85 00 | 331 66 |
| Do. | 6 | 2 | 5 | 416 66 | 85 00 | 331 66 |
| John O. Donahue | 10 | 2 | 5 | 416 66 | 85 00 | 331 66 |
| Douglas Park addition to Chicago, in W. ½ N. W. ¼, sec. 24, T. 39, R. 13. | | | | | | |
| J. L. Lombard (ex. E. 300 ft. and ex. street) | .... | .... | 1 | 3,866 00 | 400 00 | 3,466 00 |

| | |
|---|---|
| 15 Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the property specially benefited by said improvement and apportioned to and assessed upon such property..... | $249,965.21 |
| Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the public and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners..... | 241.99 |
| Total cost of the said completed improvement. | $250,207.20 |

CHICAGO, *August* 29, 1896.

The undersigned, West Chicago Park Commissioners, do hereby certify to the county court of Cook county that they have specially assessed the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, Cook county, Illinois.

And said commissioners do further certify that the said
16 special assessment is shown by the foregoing assessment-roll, showing a description of the real estate by them deemed benefited by said completed improvement; also showing a description of each lot, block, tract, or parcel of land, and the total amount assessed by them as special benefits thereto, the names of the respective owners thereof so far as known, showing, also, the amount found by said commissioners as public benefit and assessed to the district subject to the maintenance of the parks under control of said West Chicago Park Commissioners; that before entering upon their said duties they examined the locality where the said completed improvement has been made and the lots, blocks, tracts, and parcels of land which are specially benefited thereby, and did estimate what proportion of the total cost of said completed improvement is of benefit to the public, and what proportion thereof is of benefit to the property benefited, and did apportion the same between the said park district and such property so that each should bear its relative equitable portion, the amount so estimated and apportioned to said park district being the sum of $241.99 and the amount so estimated and apportioned to property benefited being the sum of $249,965.21; that, having found said amounts,
17 they did apportion and assess the amount so found of benefit to said property upon the several lots, blocks, tracts, and parcels of land in the proportion in which they are benefited by said completed improvement, and that no lot, block, tract, or parcel of land has been assessed a greater amount than it has been actually benefited thereby; that said assessment-roll also shows the credit to which each lot, block, — tract of land so specially assessed is entitled to, if any, for or on account of payments on previous assess-

ments or installments thereof, and the net amounts of benefits assessed thereon.

HARVEY T. WEEKS,
CARL MOLL,
WALTER S. BOGLE,
ANDREW J. GRAHAM,
JOHN M. OLIVER,
CHARLES J. VOPICKA,
EDWARD J. UIHLEIN,
*West Chicago Park Commissioners.*

And afterwards and on, to wit, the 1st day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

18 In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Park Boulevard. 15232.

And now, on this day, it is ordered by the court that the commissioners heretofore appointed herein who have not signed the assessment-roll in said cause have leave, and such leave is hereby given them, to sign the same.

It is further ordered by the court that said petitioners have leave to withdraw from the files in this court for three days the assessment-roll heretofore filed in said cause.

And afterwards and on, to wit, the 16th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

On motion of the attorney for the said petitioners, it is
19 ordered by the court that any and all parties desiring to object to the confirmation of the assessment-roll herein file their objections thereto in writing on or before September 23, 1896, at ten o'clock a. m.

And afterwards, on, to wit, the 15th day of September, certain objections were filed in said court; which objections were in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County, to the September Term, A. D. 1895.

In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvement of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come J. L. Lombard, E. A. Cummings, W. H. Doble,
20 J. N. Vance, Kate Triplett, John B. Taylor, William Taylor, Dennie J. Daley, Francis J. Dougherty, Robert Elliott, Estate of Michael Reilly, deceased, and Lambert Tree and Anna J. Tree, by Wilson, Moore & McIlvaine, their attorneys, and show to the court that they are the owners of the premises described in the annexed "Schedule of lands" set opposite their names respectively, assessed in said proceedings, and they object to the confirmation of the said assessment-roll for the reasons set forth in the annexed list of objections marked "Objections to judgment."

WILSON, MOORE & McILVAINE,
*Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Kate Triplett, John B. Taylor, Dennie J. Daley, Francis J. Dougherty, Estate of Michael Reilly, Deceased, Lambert Tree and Anna J. Tree.*

*Schedule of Lands.*

J. L. Lombard:

Block 1 (ex. E. 300 ft. and ex. streets), in Douglas Park addition to Chicago, in west half northwest quarter, S. 24, T. 39 N., R. 13 E., 3d P. M., assessed $3,466.

21 E. A. Cummings:

Sublot 14 of lot 2, block 1, Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of 3d P. M., assessed $539.95.

Sublot 14 of lot 2, block 2, Prescott's Douglas Park addition to Chicago aforesaid, assessed $539.95.

Sublot 1 of lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, a sub. of blocks 1, 2, 5, and 10, in circuit court partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of S. 23, T. 39 N., R. 13 E., of 3d P. M., assessed $539.95.

Sublot 10, in lot 2, block 5, in Prescott's Douglas Park addition aforesaid, assessed $331.66.

W. H. Doble:

Lot 15, in sub. of W. ½ N. ½ W. ½ E. ½ S. W. ¼, S. 14, T. 39 N., R. 13 E., of 3rd P. M., assessed $493.33.

Kate Triplett:

Lot 17, in sub. of W. ½ N. ½ W. ½ E. ½ S. W. ¼, S. 14, T. 39 N., R. 13 E. of 3d P. M., assessed $733.33.

J. N. Vance:

Sublot 28, lot "A," B. 2, Vance's Garfield Boulevard addition to Chicago, a sub. of part of blocks 1 & 2, in circuit court partition of W. ½ S. W. ¼, S. 14, T. 39 N., R. 13 E., of the 3rd P. M., assessed $458.

John B. Taylor:

Sublot 21, lot 2, block 2, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3d P. M., assessed $331.66.

William Taylor:

Sublots 22 and 23, lot 2, block 2, in Prescott's Douglas Park addition in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed $331.66.

Dennis J. Daley:

Sublot 5, lot 2, block 5, in Prescott's Douglas Park addition to Chicago in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed $331.66.

Francis J. Dougherty:

Sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed $331.66.

Lambert & Anna J. Tree:

Block 17, in Lambert Tree's subdivision of the W. ½ of the N. W. ¼ of S. 14, T. 39 N., R. 13 E., of the 3rd P. M., assessed $3,113.33.

Robert Elliott:

Lots 3 and 4, sub-block 2 of block 5, in Prescott's Douglas Park addition in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., Cook county, assessed, each, $331.66.

Estate of Michael Reilly:

Lots 31 to 48, both inclusive, in block 5, Goodwin's subdivision of the N. W. ¼ N. E. ¼, S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed, each (except lot 48), $360.

Lot 48, assessed $319.34.

*Objections to Judgment.*

1st. The ordinance for said improvement is incomplete, informal, and otherwise invalid.

2d. The ordinance for said assessment is invalid, in that it does not describe the improvement with sufficient certainty.

3d. The improvement described in said ordinance is double.

4th. Said municipality has not power or jurisdiction to make the proposed improvement.

24 5th. Said assessment is levied for a purpose not authorized by law.

6th. Said assessment was levied by commissioners who were not eligible to act as such, and who failed to qualify and take the oath as the law requires.

7th. The improvement to be paid for by said assessment has been changed, and is different from that described in said ordinance and proceedings.

8th. The petition for said assessment is informal, and does not contain a copy of the ordinance therefor.

9th. Said assessment is not levied upon the several parcels of land in the proportion of the benefits thereto from said improvement.

10th. Said assessment is levied upon a part only of the property specially benefited thereby.

11th. The said assessment upon the property of said objectors exceeds the benefits which will accrue to said property from the proposed improvement.

12th. The said assessment upon the property of said objectors exceeds the proportionate share of the expenses of said improvement equitably and fairly chargeable upon said property.

25 13th. The description of said improvement in the notices of application for confirmation, in the oath taken by the commissioners, and in the assessment-roll are insufficient and variant from the ordinance directing the making of said improvement.

14th. The petition and record do not show that the preliminary steps required by law have been taken, and such steps have not in fact been taken.

15th. The commissioners have not, in making said assessment, followed the requirements of the said ordinance, but have made and returned an assessment which does not comply either with said ordinance or the statutes of this State.

16th. The property of objectors is assessed by an illegal description and not in accordance with the division thereof.

17th. Said objectors further show that heretofore and at the May term, A. D. 1893, a proceeding was begun in this court by the corporate authorities of the town of West Chicago to confirm an assessment-roll then filed in said court for the same improvement described in this proceeding, and objections were filed on behalf of all the premises described in the above schedule of lands;

26 that upon a hearing of said objections the court found that all the said premises in the respective parcels as they had been therein assessed were not benefited to the amount of the said assessment, but for a less amount, and the said assessment as to each of said parcels was thereupon reduced to the amount so found by the court, and as so reduced was confirmed by the judgment of the court then and there entered; that all the said parcels were assessed in the said proceeding in an amount greatly less than is assessed upon them and each of them in the present proceeding; that as to

many of the premises above herein described the said assessment has been paid in full, pursuant to the said judgment, and as to all of the same payments have been made of all the installments which have accrued thereon since the said judgment of confirmation and in pursuance thereof.

The said judgment was entered upon full consideration, the court having then and there jurisdiction of the subject-matter, and of all the premises therein assessed and the owners thereof, and these objectors plead the said judgment as a complete adjudication of all the questions in issue in this cause, and hereby set up and rely upon the same in bar of this proceeding.

18th. As to the premises assessed in said assessment de-
27 scribed as block 7, in Lambert Tree's subdivision of the west half of the northwest quarter of section 14, township 39 north, range 13 east, of the third principal meridian, the owner of said premises objects to this assessment for the further reason that the work for which said assessment is levied has been done and completed and now exists; that this assessment purports to be levied in lieu of and as a substitute for a prior assessment for the same purpose; that in said prior assessment for the same improvement the west half of the northwest quarter of said section 14 was assessed as a whole; that block 17 is a small portion of the same premises, not exceeding one-twentieth thereof; that the statute does not permit a substitute assessment to be levied upon different property from that assessed in the original proceeding, and said assessment as to the premises above mentioned is void and unauthorized by law.

And afterwards & on, to wit, the 16th day of September, 1896, a motion to cancel assessment was filed in said court; which said motion to cancel assessment was in words and figures as follows, to wit:

28 STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County, to the September Term, A. D. 1896.

In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvement of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Kate Triplett, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Robert Elliott, Estate of Michael Reilly, deceased, and Lambert Tree and Anna J. Tree, by their attorneys, Wilson, Moore & McIlvaine, and move the court to cancel and annul said assessment for the following reasons, viz:

1. The assessment is unequal and inequitable, in that property which should have been assessed is omitted from the roll.

29 2. The assessment is made for largely more than the actual cost of the work and of making and levying the assessment.

3. The commissioners have abused their discretion, and have distributed the burden of said expense unfairly and unequally.

4. Said ordinance is unreasonable and oppressive, and is therefore void.

5. Said ordinance is not authorized by law, and is in excess of the powers of the municipality.

6. For each of the reasons set forth in the objections filed herein on behalf of the said respondents.

7. The said assessment is levied as an alternative or substitute assessment for work already done and completed under an ordinance which has been held void by the supreme court. The court has therefore no jurisdiction to entertain such assessment proceeding.

8. There is no valid ordinance in existence providing for said improvement.

WILSON, MOORE & McILVAINE,
*Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Kate Triplett, John B. Taylor, William*
30 *Taylor, Dennis J. Daley, Francis J. Dougherty, Robert Elliott, Lambert Tree, and Anna J. Tree.*

And afterwards, on, to wit, the 25th day of September, 1896, a certificate of publication of the notice for said assessment, together with affidavits of posting such notices and affidavit of mailing the notices, were filed in said court; which said affidavits, with notices, are respectively in words & figures as follows, to wit:

*Certificate of Publication.*

STATE OF ILLINOIS, } ss:
*Cook County,* }

This certifies that a notice, of which the annexed notice is a true copy, has been published two successive weeks in the "*The* West End Advocate," a weekly newspaper printed and published in the town of West Chicago, in the city of Chicago, in the said Cook county, Illinois, and that the date of the first paper containing the said published notice was the 29th day of August, A. D. 1896, and that the date of the last paper containing the same was the 15th day of September, A. D. 1896.

31 (Signed) CHARLES E. CRANDALL, *Publisher.*

It is further certified that the said "The West End Advocate" was at and during the time and on the dates of the said publication of said notice and is now a weekly newspaper printed and published in the town of West Chicago, in the city of Chicago, Cook county, Illinois, and of general circulation therein, and that Charles E.

Crandall was during said time and on said dates of publication and is now the publisher of said newspaper.

In witness whereof Charles E. Crandall, publisher of said "The West End Advocate," has signed this certificate this 15th day of September, A. D. 1896.

(Signed) CHARLES E. CRANDALL, *Publisher.*

*Certificate of Publication.*

STATE OF ILLINOIS, } ss:
*Cook County,* }

This certifies that a notice, of which the annexed notice is a true copy, has been published five successive days in "The Chicago Chronicle," a daily newspaper printed and published in the city of Chicago, in the said Cook county, and that the date of the
32 first paper containing the said published notice was the first day of September, A. D. 1896, and that the date of the last paper containing the same was the fifth day of September, A. D. 1896.

(Signed) H. W. SEYMOUR, *Publisher.*

It is further certified that the said "The Chicago Chronicle" was at and during the time and on the dates of the said publication of said notice and is now a newspaper printed and published in the city of Chicago, Cook county, Illinois, and of general circulation therein, and that H. W. Seymour was during said time and on said dates of publication and is now the publisher of said newspaper.

In witness whereof H. W. Seymour, publisher of said "The Chicago Chronicle," has signed this certificate this 15th day of September, 1896.

(Signed) H. W. SEYMOUR, *Publisher.*

Annexed to each of said certificates is the following notice:

*Special Assessment Notice.*

"Notice is hereby given to all persons interested that the West Chicago Park Commissioners, having ordered that the cost of the completed boulevard improvement of Douglas boulevard (or
33 Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago and in the city of Chicago, be paid by special assessment on the property benefited thereby, the ordinance for the same being on file in the office of the said West Chicago Park Commissioners, have applied to the county court of Cook county, Illinois, for an assessment of the cost of said completed portion of said improvement, according to benefits, and an assessment thereof having been made and returned to said court, the final hearing thereon will be had at the September term of said court, commencing on the 14th day of September, A. D. 1896; all

persons desiring may then and there appear and make their defense."

Dated August 29, 1896.

Signatures of—

HARVEY T. WEEKS,
CARL MOLL,
JOHN M. OLIVER,
ANDREW J. GRAHAM,
WALTER S. BOGLE,
CHAS. J. VOPICKA,
EDWARD G. UIHLEIN,
*West Chicago Park Commissioners.*

*Affidavit of Posting Notices.*

STATE OF ILLINOIS, }
*Cook County,* } *ss:*

Dennis Colbert, being duly sworn according to law, upon
34 his oath says:

That on the 27th day of August, A. D. 1896, affiant, at the instance and request of the West Chicago Park Commissioners, posted notices, of which the following annexed notice is a true copy, to wit:

(Here is set forth similar assessment notice to the one above shown.)

as follows: By securely affixing the same, one to the premises at the southeast corner of Colorado street and Douglas boulevard; one to the premises at the southeast corner of Douglas boulevard and Harrison street, the said two places being in the neighborhood of said improvement specified in said notice; one at the door of the main entrance to the office of said West Chicago Park Commissioners, and one at the door of the main entrance of the office of the supervisor of the town of West Chicago; all of such places being public places in the town of West Chicago, in the city of Chicago, Cook county, Illinois.

DENNIS COLBERT.

Subscribed and sworn to 15th day of September, A. D.
35 1896.

[SEAL.]
[SEAL.]

HARRY W. KOPPE,
*Notary Public.*

*Commissioner's Affidavit.*

STATE OF ILLINOIS, } ss
*Cook County,* }

In the County Court of Cook County, etc.

Harvey T. Weeks, being duly sworn according to law, upon oath says:

That he is and was at the time of the doing of the acts hereinafter mentioned one of the West Chicago Park Commissioners; that said West Chicago Park Commissioners, having heretofore made a special assessment to assess the cost of the completed boulevard improvement on Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago—the assessment-roll therefore being on file in the above cause—that said West Chicago Park
36 Commissioners did cause to be sent by mail to the owners whose premises have been specially assessed by the said Commissioners, as aforesaid, for the cost of said completed portion of said improvement, and whose names and places of residence were known to said commissioners or either of them, the notice required by law to be sent by mail to the owners of premises assessed; that a substantial copy of said notice was as follows:

"Mr. (here the name was inserted): Your (here the description of the premises was inserted) is assessed (here the amount of assessment on the premises was inserted) for public improvement. The assessment-roll will be returned to the September term, A. D. 1896, of the county court of Cook county. Harvey T. Weeks, Carl Moll, John M. Oliver, Andrew J. Graham, Walter S. Bogle, Charles J. Vopicka, Edward H. Uihlein, West — Park Commissioners.

NOTE.—The above assessment is for the completed portion of the boulevard improvement of Douglas boulevard from Garfield park to Douglas park."

That each and all of said notices were mailed on the 3d day of September, A. D. 1896, and at least ten days before the first day of said September term, A. D. 1896.

HARVEY T. WEEKS.

Subscribed and sworn to 15th day of September, A. D. 1896.

ENOCH J. PRICE,
[SEAL.] *Notary Public.*

37 And afterwards and on, to wit, the 26th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Assessment by THE WEST CHICAGO PARK COMMISSIONERS for the Completed Boulevard Improvement on Douglas Boulevard from Garfield Park to Douglas Park, in the Town of West Chicago, City of Chicago. 15232.

On this 26th day of September, A. D. 1896, comes The West Chicago Park Commissioners, by *its* attorney, and moves the court for a default herein and for confirmation of said assessment.

And it appearing to the court that the said West Chicago Park Commissioners have complied with all the requirements of the law in making said assessment, and also as to posting and sending notices to the owners of the property assessed, and that due publication of notice was made, and that due notice, as required by law, has been given of this application and of the making and return of said assessment and of the time for the final hearing thereon,
38 and no objection to said assessment having been filed, except as to the real estate described below, and no defense thereto made except on behalf of the owners of the real estate for which objections have been filed—

It is ordered and adjudged by the court that a default be, and is hereby, entered against each and all the lots, blocks, tracts, and parcels of land assessed and described in the said assessment-roll for said improvement, returned and filed in this court, as to which no objections have been filed, and that said assessment and all proceedings therein be, and the same are hereby, confirmed, except as to the real estate described in objections on file, and that the clerk of this court certify the assessment-roll returned by said commissioners, together with this judgment, to Dennis Colbert, collector of special assessments for said West Chicago Park Commissioners, it appearing to the court that he is authorized to collect the said assessments as required by law.

The real estate for which objections have been filed is described as follows:

Block 1 (ex. E. 300 ft. and ex. streets), in Douglas Park addition to Chicago, in W. ½ of N. W. ¼, 24, 39, 13 E.; sublot 14 of
39 lot 2, block 1, Prescott's Douglas Park addition, 23, 39, 13; sublot 14 of lot 2, block 2, Prescott's Douglas Park addition aforesaid; sublot 1 of lot 2, in block 5, Prescott's Douglas Park addition, a sub of blocks 1, 2, 5, and 10, in circuit — partition of E. ½ N. E. ¼, E. ½ S. E. ¼, of sec. 23, 39, 13 E.

Sublot 10, in lot 2, block 5, in Prescott's Douglas Park addition aforesaid; lot 15, in subdivision of W. ½ N. ½, W. ½ E. ½ S. W. ¼, 14, 39, 13; lot 17, in subdivision of W. ½ N. ½, W. ½ E. ½ S. W. ¼, 14, 39, 13; sublot 28, lot "A," block 2, in Vance's Garfield boulevard addition, a sub of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, 14, 39, 13; sublot 21, lot 2, block 2, in Prescott's Douglas Park addition, 23, 39, 13; sublots 22, 23, lot 2, block 2, in Prescott's Douglas Park addition, 39, 13; sublot 5, lot 2, block 5, in Prescott's Douglas Park addition, 23, 39, 13; sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition, 23, 39, 13; block 17 in Lambert Tree's sub of W. ½ of N. W. ¼, 14, 39, 13; lots 3 and 4,

sub-block 2 of block 5, in Prescott's Douglas Park addition, 23, 39, 13; lots 31 to 48, both inclusive, in block 5, Goodwin's sub of N. W. ¼ N. E. ¼, 23, 39, 13.

40 And afterwards and on, to wit, the 17th day of December, 1896, a certain amendment to objections was filed in said court; which said amendment to objections was in words as follows, to wit:

STATE OF ILLINOIS, } ss.:
*County of Cook,* }

In the County Court of Cook County.

In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvement of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come the objectors, represented by Wilson, Moore & McIlvaine, in the above proceeding, viz., J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael
41 Reilly, deceased, and, by leave of court for that purpose first had and obtained, amend the objections heretofore filed by them to the confirmation of the assessment-roll in said proceeding by adding thereto the following objections, viz:

1. Said new or supplemental proceeding and assessment is not authorized by law.

2. The said new or supplemental proceeding and assessment does not follow the requirements of the statute nor conform thereto.

3. On behalf of objector Lombard it is further objected that his property was not assessed in the original roll and was assessed in said proceeding by consent, and with the agreement between the parties that it should be assessed $1,000.00 and no more, which agreement was carried into effect by said judgment, and in reliance on said agreement said objector has paid two instalments of the assessment so levied.

4. Said Lombard further objects that after said assessment was made and judgment entered thereon, as stated in the last preceding objection, a new agreement was made and entered into by and between said objector and said park commissioners, by which
42 it was agreed, for a sufficient consideration, that in addition to the said assessment of $1,000.00 he should also pay an additional sum of two thousand dollars, making three thousand dollars in all, which agreement is still in full force and effect.

WILSON, MOORE & McILVAINE,
*Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael Reilly, Deceased.*

And afterwards and on, to wit, the 17th day of December, 1896, a certain "amendment to motion to cancel" was filed in said court; which said "amendment to motion to cancel" was in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County.

43 In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment No. 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvements of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come the objectors, represented by Wilson, Moore & McIlvaine in the above proceeding, viz., J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael Reilly, deceased, and, by leave of court for that purpose first had and obtained, amend the "motion to cancel" heretofore filed by them in said proceeding by adding in support thereof the following reasons, viz:

1. Said new or supplemental proceeding and assessment is not authorized by law.

2. The said new or supplemental proceeding and assessment does not follow the requirements of the statute nor conform
44 thereto.

WILSON, MOORE & McILVAINE,
*Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael Reilly, Deceased.*

And afterwards and on, to wit, the 3rd day of October, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Park Boulevard. 15232.

And now, on this day, it is ordered by the court that Edward J. Uihlein, heretofore appointed a commissioner herein, have leave, and such leave is hereby given him, to sign the assessment-roll in said cause.

And afterwards and on, to wit, the 27th day of April, 1897, the following, among other, proceedings were had by and before
45 said court and entered of record, to wit:

*Special Assessment.*

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day again come the petitioners herein, by their attorney, and the objectors herein, by their attorneys, and said cause comes on to be heard on the legal objections to said assessment. After arguments of counsel and due deliberation by the court, it is ordered that all of said legal objections be, and are hereby, sustained.

And thereupon, on motion of the said objectors, it is further ordered that the petition herein be, and is hereby, dismissed.

Whereupon the said West Chicago Park Commissioners now here duly excepts and prays an appeal to the supreme court of the State of Illinois, which is allowed them on filing herein bill of exceptions within sixty days.

46 And afterwards and on, to wit, the 7th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

*Special Assessment.*

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

On this day comes the said petitioner, by its attorney, and enters its motion for a rehearing in said cause; which is continued until tomorrow.

And afterwards and on, to wit, the 8th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

*Special Assessment.*

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

And now, on this day, said cause again comes on to be heard on the petitioner's motion heretofore entered for a rehearing in said cause. Come all the parties in interest by their attorneys re-
47 spectively. After arguments of counsel and due deliberation of the court, it is ordered that said motion for a rehearing, as aforesaid, be, and is hereby, overruled; whereupon the said petitioners now here duly except and pray an appeal to the supreme court of the State of Illinois, which is allowed on said petitioners filing herein bill of exceptions within sixty days from this date.

And afterwards and on, to wit, the 8th day of February, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Special Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard from Garfield Park to Douglas Park. 15232.

And now comes The West Chicago Park Commissioners, petitioner herein, and on its motion it is ordered that as to all the property for which a default order of confirmation was heretofore entered, to wit, on September 26, 1896, the said order of confirmation is hereby re-entered and reconfirmed as of its date, *nun- pro tunc*, as of September 26, 1896.

And it is further ordered that as to all such property affected by said order of confirmation the clerk of this court certify forth-
48 with the assessment-roll returned in this cause by said commissioners, together with this judgment and said judgment of September 26, 1896, of Homer B. Galpin, collector of special assessments for said West Chicago Park Commissioners, it appearing to the court that said office, viz., collector of special assessments, is an office which has been created by said commissioners, and that said Homer B. Galpin is the present incumbent of said office.

And afterwards and on, to wit, the 6th day of April, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of DOUGLAS PARK BOULEVARD ASSESSMENT. 15232.

On motion of the attorney for the said petitioner, it is ordered by the court that the said cause be, and is hereby, reinstated as to all the objections on file herein, and the hearing of said objections is hereby set for May 17, 1898, at ten o'clock a. m.

And afterwards and on, to wit, the 4th day of June, 1898,
49 *nunc pro tunc*, as of the 3d day of June, 1898, certain "additional objections" were filed in said court; which said "additional objections" were in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
*County of Cook*, }

In the Circuit Court of Cook County.

In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of the Special Assessment for Improving Douglas Park Boulevard.

By leave of court for that purpose, Wilson, Moore & McIlvaine, attorneys for certain objectors who have heretofore filed their objections herein, and to the objections already filed by them in behalf of the property scheduled in their original objections and not since that time withdrawn, — the following objections—that is to say:

*Additional Objections on Behalf of Objectors, Represented by Wilson, Moore & McIlvaine.*

First. The said assessment and the proceeding to confirm
50 the same is in violation of the 14th amendment to the Constitution of the United States, and especially that part of section 1 thereof which is as follows:

"No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Second. The said assessment and this proceeding to confirm the same is not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge, or any charge for that purpose, would be without the process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

Third. The ordinance for the making of the said improvement by special assessment upon private property was void, and the said work was done without valid ordinance therefor. The pres-
51 ent ordinance was levied to pay for work already done. The said charge is therefore not authorized by any law, and is in conflict with the guarantees contained in the 14th amendment to the Constitution of the United States, in this, that it would take the property of the said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

Fourth. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

Fifth. The statute of 1895 upon which the present assessment and proceeding are based is in conflict with the provisions of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of said objectors.

WILSON, MOORE & McILVAINE,
*Att'ys for Certain Objectors.*

52 And afterwards on, to wit, the 4th day of June, 1898, *nunc pro tunc*, as of the 3rd day of June, 1898, there was filed

in said court a certain stipulation; which said stipulation was in words as follows, to wit:

"STATE OF ILLINOIS, } ss:
"*County of Cook,* }

"In the County Court of Cook County.

"In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of Assessment-roll in Special Assessment for Completed Boulevard Improvement of Douglas Boulevard. No. 15232.

"*Stipulation.*

"It is hereby stipulated by and between the petitioners and the objectors represented by Wilson, Moore & McIlvaine that for the purposes of the trial of said cause upon said objection a jury be, and is hereby, waived, and that said cause shall be submitted to the court for trial and disposition without the intervention of a jury.

It is further stipulated and agreed that the objections of said
53 objectors represented by Wilson, Moore & McIlvains shall not be called for trial with the remaining objections in said cause which may be tried before a jury, but shall be passed and tried separately from the issues of the other objectors, the case to be set down and tried upon the request of either party not less than one week after the disposition of the cause as to the other objectors.

"It is further stipulated that the said Wilson, Moore & McIlvaine may file additional objections on behalf of any one or more of their clients, copies of said objections to be delivered to the counsel for the petitioners at least five days before the said cause is to be tried.

"Chicago, May 12th, 1898.

"F. A. RIDDLE,
"H. S. MECARTNEY, *For Petitioner.*
"WILSON, MOORE & McILVAINE."

And afterwards and on, to wit, the 7th day of June, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

STATE OF ILLINOIS, } ss:
*County of Cook,* }

54 In the County Court of Cook County.

In the Matter of the Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard. Number 15232.

And now comes the petitioner, and, by leave of the court first had and obtained by order of court of May 17, A. D. 1898, amends its petition as follows:

Strike out the words "on the fourteenth day of July, A. D. 1896," in the paragraph immediately preceding the recital of an ordi-

nance of that date, and insert therein "the fourth day of August A. D. 1896."

And afterwards, on the 4th day of June, *nunc pro tunc*, as of the 3rd day of June, 1898, there was filed in said court a certain motion to cancel assessment; which said motion to cancel assessment was in words and figures as follows, to wit:

"STATE OF ILLINOIS, } ss:
"*County of Cook*, }

"In the County Court of said County.

55 "In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of a Special Assessment for Improving Douglas Park Boulevard.

"Now come the several persons named in the schedule of objections heretofore filed by Wilson, Moore & McIlvaine, representing the property owned by them as described in said schedule, assessed for the present improvement, and move the court to dismiss the said proceeding as to the said property of said objectors for the several and respective reasons mentioned, viz:

"1st. The assessment is unequal and inequitable, in that property which should have been assessed is omitted from the roll.

"2nd. The assessment is made for largely more than the actual cost of the work and of making and levying the assessment.

"3rd. The commissioners have abused their discretion, and have distributed the burden of said expense unfairly and unequally.

"4th. Said ordinance is unreasonable and oppressive, and is therefore void.

56 "5th. Said ordinance is not authorized by law, and is in excess of the powers of the municipality.

"6th. The said assessment and the proceeding to confirm the same is in violation of the 14th amendment to the Constitution of the United States, and especially that part of section one thereof which is as follows:

"'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

"7th. The said assessment and this proceeding to confirm the same is not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment, which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge, or any charge for that purpose, would be without due process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States."

57 "8th. The ordinance for the making of the said improvement by special assessment upon private property was void and the said work was done without valid ordinance therefor. The present ordinance was levied to pay for the work already done. The said charge is therefore not authorized by any law, and is in conflict with the guaranties contained in the 14th amendment to the Constitution of the United States, in this: That it would take the property of the said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

"9th. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895 after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

"10th. The statute of 1895, upon which the present assessment and proceedings are based, is in conflict with the provisions
58 of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of said objectors.

"11th. For each of the other reasons set forth in the objections filed herein on behalf of said respondents.

"WILSON, MOORE & McILVAINE,
"*Att'ys for Certain Objectors.*"

And afterwards, on, to wit, the 7th day of June, 1898, the following proceedings, among others, were had and entered of record in said court, to wit:

STATE OF ILLINOIS, } ss.:
*County of Cook,* }

In the County Court of Cook County.

*In re* Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard. Number 15232.

And now, on this seventh day of June, A. D. 1898, come the objectors hereinafter described, represented of record herein by
59 Wilson, Moore & McIlvaine, attorneys, and in open court the objections filed in the name of the said attorneys are withdrawn by and for said objectors and as to the property hereinafter described, and thereupon the petitioner moves the court for the confirmation of said assessment as against each and all the said lots, tracts, and parcels of land so described, and it appearing to the court that the said West Chicago Park Commissioners have complied with all the requirements of the law in making said assess-

ment, and also in posting and sending notices to the owners of the property assessed, and that due publication of notice was made, and that due notices, as required by law, *has* been given of this application, and of the making and return of the said assessment, and of the time for the final hearing thereon, and no objection to said assessment having been filed as to the said real estate described below, except such as have hereinabove been withdrawn, and no defense thereto made, it is ordered and adjudged by the court that a default be, and is hereby, entered against each and all the said lots, blocks, tracts, and parcels of land as assessed in the said assessment-roll for said improvement, and that said assessment and
60 all proceedings therein be, and the same are hereby, confirmed as to the said real estate. The real estate and parties so withdrawing objections are set out and described as follows:

Kate Triplett:

Lot 17, in sub of W. ½ N. ½, W. ½ E. ½, S. W. ¼, S. 14, T. 39 N., R. 13 E., of 3d P. M.

John B. Taylor:

Sublot 21, lot 2, block 2, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

William Taylor:

Sublots 22 and 23, lot 2, block 2, in Prescott's Douglas Park addition, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

Dennis J. Daley:

Sublot 5, lot 2, block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

Robert Elliott:

Lots 3 and 4, sub-block 2 of block 5, in Prescott's Douglas Park addition, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

WILLIAM T. HODSON,
*Acting Judge.*

61 And afterwards, to wit, on the 10th day of June, A. D. 1898, the following, among other, proceedings were had by and before said court and entered of record as follows, to wit:

STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of said County.

In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of the Special Assessment for Improving Douglas Boulevard.

*Order of Confirmation as to Certain Property.*

Said cause having come on to be heard upon the objections filed by Wilson, Moore & McIlvaine, attorneys, said objectors moved the court to dismiss the said petition upon the following grounds, to wit:

1st. That the proceeding was in conflict with the 14th amendment to the Constitution of the United States.

2nd. On the ground that the original ordinance for the
62 present improvement, in so far as it provided for the assessment therefor, was void.

3rd. On the ground that the improvement provided for by the original ordinance is double, and that the said improvement as actually laid, for which the present assessment is levied, is double.

Which said motion was denied by the court; to which action of the court counsel for said objectors then and there excepted.

Thereupon the said objectors moved the court to strike out from the said assessment the whole amount thereof in excess of the actual cost of said work and the estimated cost of the present assessment; which motion was denied; to which ruling of the court the said objectors then and there excepted.

Thereupon the said objectors moved the court to strike out of the said assessment-roll all the amounts assessed in this proceeding upon any of the property of said objectors in excess of the amount at which the same was confirmed by the original order and confirmation, entered October 27th, 1893; which motion was denied by the court; to which action of the court the counsel for said objectors then and there excepted.

The said objectors thereupon moved the court to strike out of the said assessment-roll, as to the property of Josiah L. Lom-
63 bard, objected for, all of said assessment in excess of the amount provided for in his contract offered in evidence; which motion was denied; to which action of the court said objector, Josiah L. Lombard, then and there duly excepted.

Said objectors thereupon moved the court to recast the assessment-roll, so as to distribute the cost of said improvement in accordance with the benefits actually derived therefrom, differently from the distribution made by the commissioners in the present roll; which motion the court denied; to which action of the court the said objectors then and there excepted.

And thereupon, said cause having come on to be heard as to all objections of the said objectors, except those triable by jury, the said

objectors objected to the confirmation of the said assessment upon all the grounds contained in the said objections and those above specified other than the objections triable by jury, but the court overruled all the said objections; to which action of the court the objectors then and there excepted.

And thereupon it is ordered that all the objections of the said objectors which are triable before the court without a jury be, and they are hereby, overruled.

The said objections having come on to be heard as to the
64 merits of said assessment-roll, and the parties in open court waived the trial by jury and submitted the cause to the court without a jury, the court, having heard the evidence educed, finds—

That the property of each of the said objectors described in said objections has not been assessed more than it has been specially benefited by the said improvement or more or less than its proportionate share of the cost of said improvement, and that the said assessment-roll as to each and all of the said lots, tracts, and parcels of land described in the said objections should be confirmed; to which finding of the court the said objectors then and there duly excepted.

And thereupon counsel for objectors moved the court to set aside the said finding and for a new trial, which motion was in writing, and is as follows:

"Now come the objectors, represented by Wilson, Moore & McIlvaine, and move the court for a new trial of the said cause and to set aside his findings therein for the following reasons:

"1st. For each of the reasons stated in the several motions and objections heretofore filed by said objectors.

65 "2nd. For that the said finding is not in accordance with the evidence.

"3rd. For that the said finding is not according to law.

"4th. For that the said finding is not authorized by the proceedings in the cause.

"5th. For that the court admitted improper evidence offered by the petitioner and refused to strike the same out of the record.

"6th. For other reasons."

Which motion the court denied; to which action of the court the said objectors then and there duly excepted.

And thereupon the said objectors moved the court in arrest of judgment, on the same grounds stated in the motions and objections heretofore filed, and also on the same grounds stated in the said motion for a new trial; which said motion the court denied; to which action of the court the said objectors, by their counsel, then and there duly excepted.

Whereupon it is here considered and adjudged by the court that the said assessment-roll as to each and all of said lots, tracts, and parcels of land below mentioned should be, and the same is hereby, confirmed—that is to say:

J. L. Lombard:

66 Block 1 (ex. E. 300 ft. and ex. streets), in Douglas Park addition to Chicago, in west half northwest quarter of S. 24, T. 39 N., R. 13 east, of 3rd P. M., assessed.

E. A. Cummings:

Sublot 14 of lot 2, block 1, Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Sublot 14 of lot 2, block 2, Prescott's Douglas Park addition to Chicago aforesaid.

Sublot 1 of lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, a sub of blocks 1, 2, 5, and 10, in circuit court partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Sublot 10, in lot 2, block 5, in Prescott's Douglas Park addition aforesaid.

W. H. Doble:

Lot 15, in sub of W. ½ N. ½, W. ½ E. ½, S. W. ¼, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

J. N. Vance:

Sublot 28, lot "A," B. 2, Vance's Garfield Boulevard addition to Chicago, a sub of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

67 Francis J. Dougherty:

Sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Lambert & Anna J. Tree:

Block 17, in Lambert Tree's sub of the W. ½ of the N. W. ¼ of S. 14, T. 39 N., R. 13 east, of the 3rd P. M.

Estate of Michael Reilly:

Lots 31 to 48, both inclusive, in block 5, Goodwin's subdivision of the N. W. ¼ N. E. ¼, S. 23, T. 39 N., R. 13 east, of the 3rd P. M.

And that as to the said lots, tracts, and parcels of land the said assessment-roll should be, and the same is hereby, confirmed (to which judgment and order of the court the said objectors then and there excepted).

And thereupon the said objectors pray an appeal from the said judgment to the supreme court of Illinois, which is allowed, and it is ordered that the said objectors may, if they so elect, file a joint appeal bond in the penal sum of five hundred dollars ($500.00), and

as many as shall not elect to join in said bond may file their several bonds in the respective sums of two hundred and fifty dollars
68 ($250.00) each, all bonds and security to be approved by the clerk of the court, said bonds and bill of exceptions to be filed within forty (40) days from the entry of this judgment.

And afterwards, on July 8th, 1898, the following proceedings, among others, were had and entered of record in said court, to wit:

"STATE OF ILLINOIS, }
"*County of Cook,* } *ss:*

"In the County Court of Cook County.

"In the Matter of the Petition of WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. No. 15232.

"*Order.*

"On motion of Wilson, Moore & McIlvaine, attorneys for certain objectors in said cause, and the petitioners, by Harry S. Mecartney, their attorney, consenting thereto, it is ordered that Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly
69 be, and they hereby are, substituted in the assessment-roll filed in said cause and in the objections to the confirmation of said assessment filed by Wilson, Moore & McIlvaine on behalf of certain objectors for the estate of Michael Reilly, deceased, *nunc pro tunc*, as of the dates of the filing of said assessment roll and said objections; and, further, that said substitution be, and is hereby, made in all the orders and proceedings had in this cause relating to the property so objected for up to and including the order entered on the tenth day of June, A. D. 1898, granting to said objectors an appeal to the supreme court of Illinois, and all without prejudice to any of their rights as objectors and appellants or to any of the proceedings heretofore had in this cause, and with the same effect as if they had been originally named in said assessment roll and said objections, instead of the estate of Michael Reilly, deceased, and in all the orders and pleadings had in said cause.

"O K.

"O. N. C.

"O K.

"H. S. MECARTNEY,
"*For Petitioner.*"

70 And afterwards, to wit, on the 14th day of July, A. D. 1898, there was filed with the clerk of said court a certain bond in words and figures as follows, to wit:

Know all men by these presents that we, Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary E. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly and Matilda C. Reilly, and Silas M. Moore, of the county of Cook and State of Illinois, are held and firmly bound unto the West Chicago Park Commissioners, also of the same county and State, in the penal sum of five hundred dollars ($500.00), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 14th day of July, A. D. 1898.

The conditions of the above obligation *is* such that whereas the said West Chicago Park Commissioners did on the tenth (10th) day of June, A. D. 1898, in the county court of Cook county, in the State aforesaid, and of the May term thereof,
71 A. D. 1898, recover a judgment against the above-bounden Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, in the nature of a judgment of confirmation of a special assessment levied against the property of said obligors, in a certain special assessment proceeding in said county court, entitled In the matter of the petition of West Chicago Park Commissioners to improve "Douglas boulevard," and number- on the docket thereof No. 15232, from which said judgment of the said county court of Cook county the said Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly have prayed for and obtained an appeal to the supreme court of Illinois:

Now, therefore, if the said Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty,
72 Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly shall duly prosecute their said appeal with effect and, moreover, pay the amount of the judgment for costs, interests, and damages to be rendered against them and each of them in case the said judgment of confirmation shall be affirmed — the said supreme court, then

the above obligation to be void; otherwise to remain in full force and virtue.

JOSIAH L. LOMBARD. [SEAL.]
ANNA J. TREE, [SEAL.]
By HOWARD G. GREY, *Her Agent.*
LAMBERT TREE, [SEAL.]
By HOWARD G. GREY. *His Agent.*
EDMUND A. CUMMINGS, [SEAL.]
FRANCIS J. DOUGHERTY, [SEAL.]
By WALTER G. MOORE, *Att'y-in-fact.*
MICHAEL REILLY, JR., [SEAL.]
GEORGE V. REILLY, [SEAL.]
HELEN M. JAMISON, [SEAL.]
AGNES G. REILLY, [SEAL.]
CHARLES J. REILLY, [SEAL.]
73 JOSEPHINE T. REILLY, [SEAL.]
MARY C. REILLY, [SEAL.]
HELEN C. REILLY, [SEAL.]
MICHAEL A. REILLY, [SEAL.]
THOMAS W. REILLY, [SEAL.]
MATILDA C. REILLY, [SEAL.]
By WALTER G. MOORE,
*Their Attorney-in-fact.*
J. NELSON VANCE, [SEAL.]
W. H. DOBLE, [SEAL.]
SILAS M. MOORE, [SEAL.]
By E. A. CUMMINGS, *Their Agent.*

O K.
H. S. MECARTNEY.

Approved this 14th day of July, A. D. 1898.
PHILIP KNOPF, *Cl'k.*

And afterwards, to wit, on the 18th day of July, A. D. 1898, there was filed with the clerk of said court a certain bill of exceptions in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County.

In the Matter of the Application of THE WEST PARK COMMIS-
74 SIONERS for Confirmation of the Assessment for Improving Douglas Park Boulevard. No. 15232.

Objections of Wilson, Moore & McIlvaine.

*Stipulation.*

It is stipulated by the parties hereto that the original bill of exceptions herein may be inserted in the record in lieu of a copy thereof.

WILSON, MOORE & McILVAINE.
H. S. MECARTNEY.

July 14th, 1898.

STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County.

In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of the Special Assessment for Improving Douglas Boulevard. 15232.

Hearing of objections filed by Wilson, Moore & McIlvaine.

75 *Bill of Exceptions.*

Be it remembered that on the third day of June, A. D. 1898, being one of the days of the May term, A. D. 1898, of said court, the said cause above entitled came on to be heard as to the property described in the objections filed by Wilson, Moore & McIlvaine before the undersigned judge, presiding—that is to say, as to the property scheduled below:

1. J. L. Lombard:

Block 1 (ex. E. 300 feet and ex. streets), in Douglas Park addition to Chicago, in west half northwest quarter, S. 24, T. 39 N., R. 13 E., of 3rd P. M.

2. E. A. Cummings:

Sublot 14 of lot 2, block 1, Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Sublot 14 of lot 2, block 2, Prescott's Douglas Park addition to Chicago aforesaid.

Sublot 1 of lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, a sub of blocks 1, 2, 5, and 10, in circuit court
76 partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of S. 23, T. 39 N., R. 10 east, of 3rd P. M.

Sublot 10, in lot 2, in block 5, in Prescott's Douglas Park addition aforesaid.

3. W. H. Doble:

Lot 15, in sub of W. ½ N. ½, W. ½ E. ½, S. W. ½, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

4. J. N. Vance:

Sublot 28, lot "A," B. 2, Vance's Garfield Boulevard addition to Chicago, a sub of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

5. Francis J. Dougherty:

Sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

6. Lambert & Anna J. Tree:

Block 17, in Lambert Tree's sub of the W. ½ of the N. W. ¼ of S. 14, T. 39 N., R. 13 east, of the 3rd P. M.

7. Estate of Michael Reilly:

77 Lots 31 to 38, both inclusive, in block 5, Goodwin's subdivision of the N. W. ¼ N. E. ¼, S. 23, T. 39 N., R. 13 east, of the 3rd P. M.

Upon said hearing the said objectors moved the court, through their counsel, for leave to file the following additional objections:

First. The said assessment and the proceeding to confirm the same *is* in violation of the 14th amendment of the Constitution of the United States, and especially that part of section 1 thereof which is as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Second. The said assessment and this proceeding to confirm the same *is* not authorized or justified by any valid ordinance for making the improvement in question and paying the cost
78 thereof by special assessment which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge or any charge for that purpose would be without the process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

Third. The ordinance for the making of the said improvement by special assessment upon private property was void, and the said work was done without valid ordinance therefor. The present ordinance was levied to pay for work already done. The said charge is therefore not authorized by any law, and is in conflict with the guaranties contained in the 14th amendment to the Constitution of the United States in this, that it would take the property of the said objectors without due proeess of law, and that it would deny to the said objectors the equal protection of the laws.

Fourth. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary
79 to the provisions of the 14th amendment to the Constitution of the United States and would deprive the said objectors of their property without due process of law and would deny to the said objectors the equal protection of the laws.

Fifth. The statute of 1895, upon which the present assessment and proceeding are based, is in conflict with the provisions of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of said objectors.

To which motion counsel for the petitioners objected, and thereupon counsel for the said objectors presented to the court a stipulation, previously executed, which is as follows:

"It is hereby stipulated by and between the petitioners and the objectors represented by Wilson, Moore & McIlvaine that for the purposes of the trial of said cause upon said objections a jury be, and is hereby, waived, and that said cause shall be submitted to the court for trial and disposition without the intervention of a jury.

It is further stipulated and agreed that the objections of said
80 objectors represented by Wilson, Moore & McIlvaine shall not be called for trial with the remaining objections in said cause which may be tried before a jury, but shall be passed and tried separately from the issues of the other objectors, the case to be set down and tried upon the request of either party not less than one week after the disposition of the cause as to the other objectors.

"It is further stipulated that the said Wilson, Moore & McIlvaine may file additional objections on behalf of any one or more of their clients, copies of said objections to be delivered to the counsel for the petitioners at least five days before the said cause is to be tried.

"Chicago, May 12th, 1898.

"F. A. RIDDLE.
"H. S. MECARTNEY.
"WILSON, MOORE & McILVAINE."

Which said stipulation was filed and thereupon leave was granted to said objectors to file the said objections, which were then and there duly filed.

At the same time the said objectors presented a motion in writing, a copy of which is as follows:

"Now come the several persons named in the schedule of objections heretofore filed by Wilson, Moore & McIlvaine, repre-
81 senting the property owned by them as described in said schedule, assessed for the present improvement, and move the court to dismiss the said proceeding as to the said property of said objectors for the several and respective reasons mentioned, viz:

1st. The assessment is unequal and inequitable in that property which should have been assessed is omitted from the roll.

2nd. The assessment is made for largely more than the actual cost of the work and of making and levying the assessment.

3rd. The commissioners have abused their discretion and have distributed the burden of said expense unfairly and unequally.

4th. Said ordinance is unreasonable and oppressive, and is therefore void.

5th. Said ordinance is not authorized by law, and is in excess of the powers of the municipality.

6th. The said assessment and the proceeding to confirm the same *is* in violation of the 14th amendment to the Constitution of the United States, and especially that part of section one thereof which is as follows:

82 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property

without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

7th. The said assessment and this proceeding to confirm the same *is* not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment, which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge, or any charge for that purpose, would be without due process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

8th. The ordinance for the making of the said improvement by special assessment upon private property was void and the said work was done without valid ordinance therefor. The present ordinance was levied to pay for the work already done. The said charge is therefore not authorized by any law, and is in
83 conflict with the guaranties contained in the 14th amendment to the Constitution of the United States, in this: That it would take the property of the said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

9th. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

10th. The statute of 1895, upon which the present assessment and proceeding are based, is in conflict with the provisions of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no- sufficient authority for the imposition of the charge hereby contemplated upon the property of said objectors.

11th. For each of the other reasons set forth in the objections filed herein on behalf of the said respondents."

Which motion was filed in said cause.

Thereupon the petitioners, to maintain the issues on their
84 part, offered in evidence an ordinance passed by the West Chicago Park Commissioners on March 28th, 1893, which is as follows:

*The Ordinance of West Chicago Town Board of March 28th, 1893.*

An ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the city of Chicago, town of West Chicago, county of Cook and State of Illinois.

Whereas, the West Chicago Park Commissioners have under their control a certain boulevard or pleasureway known as Douglas boulevard, or Douglas Park boulevard, lying and situate between the southeasterly line of Garfield park (formerly known as Central park) and running thence south for a distance of 4,250 feet, more or less, to a point in sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its
85 intersection with the west line of Douglas park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago park commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, said West Chicago Park Commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans, specifications and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

Whereas, said West Chicago Park Commissioners have made plans, specifications and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications and estimates of the cost of such improvement as provided by law; and,

Whereas, said board of West Chicago Park Commissioners
86 have also submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

Whereas, the corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land fronting on Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield park to the west line of Douglas park, as provided by law;

Now, therefore, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act

of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield park to the west line of
87 Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

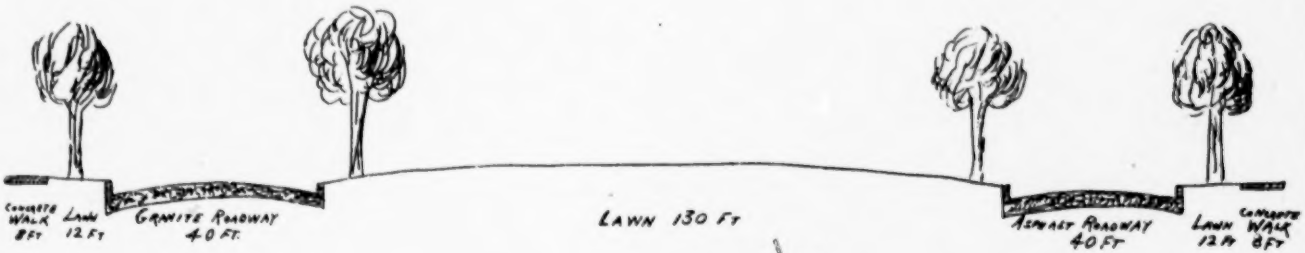
SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago Park Commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below
88 the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand, gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces, and all fresh filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

SECTION 4. That the supervisor of the town of West Chicago proceed*ed* at once to file a petition in the name of the town in the county court of Cook county for proceedings to assess the cost of the improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago Park Commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

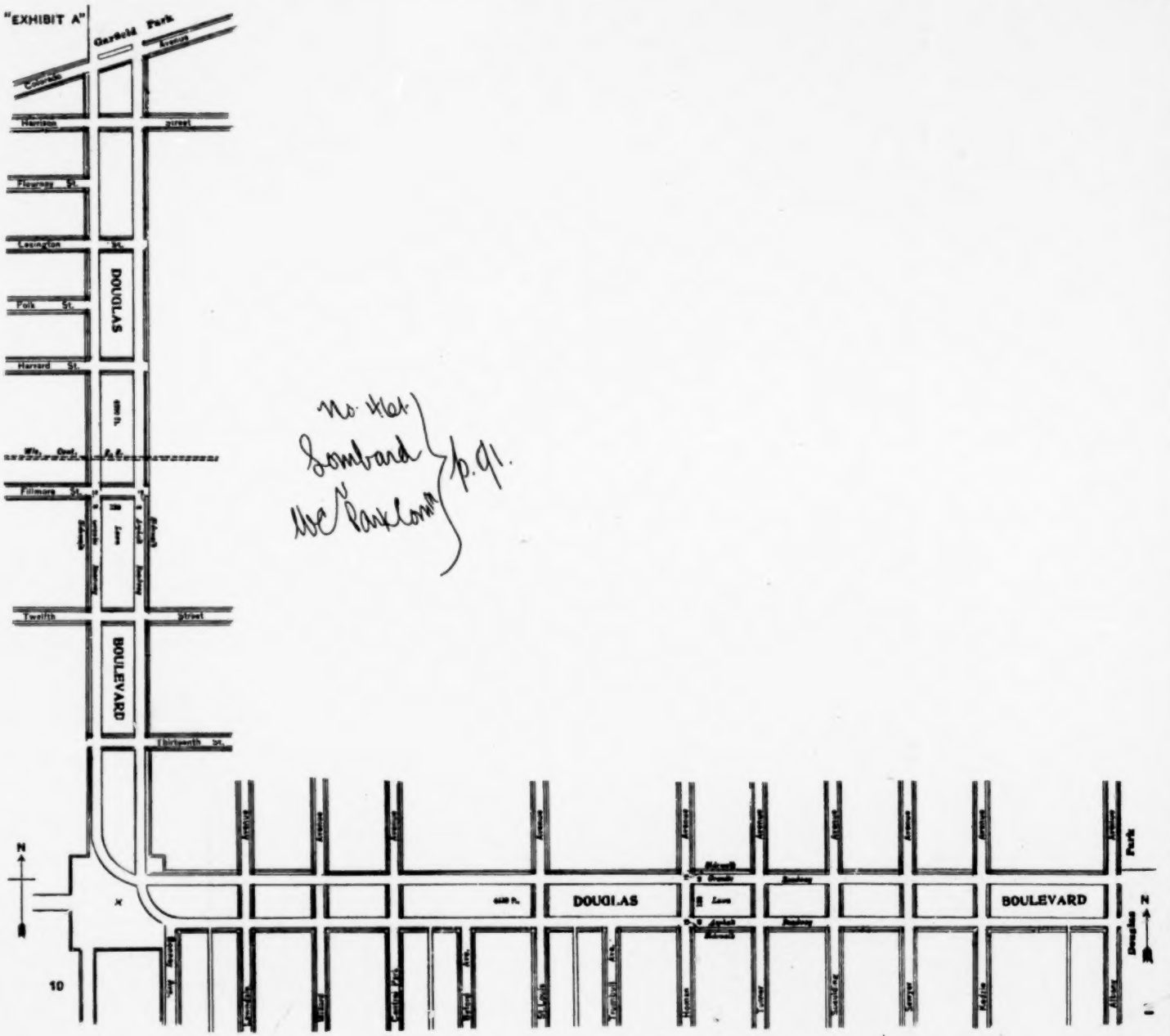
1886

No 461.
Lombard et al
vs.
W.C. Park Com'r
p. 90




CROSS SECTION of DOUGLAS BOULEVARD

IMPROVEMENT




no. Hist
Lombard
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p. 91.

STATE OF ILLINOIS, } ss:
*Cook County, Town of West Chicago,* }

I, Mortimer J. Scanlan, town clerk of the town of West Chicago, in the county of Cook and State of Illinois, do hereby
89 certify that the annexed and foregoing is a true and correct copy of an ordinance adopted and passed by the corporate authorities of the said town of West Chicago, said corporate authorities being the town supervisor, the town clerk, and assessor of said town, at a special meeting held for that purpose by said corporate authorities, at the town office of said town of West Chicago, on the 28th day of March, 1893, which said ordinance was on that day duly filed and entered upon the records of the said town of West Chicago.

MORTIMER J. SCANLAN,
*Town Clerk.*

Also the plats thereto attached marked "Exhibit A," which are as follows:

(Here follow diagrams marked pp. 90 & 91.)

92 Also the specifications which were a part thereof *which were a part thereof* and were as follows, marked "Exhibit B:"

*Specifications.*

Specifications for the improvement of Douglas boulevard (or Douglas Park boulevard), lying and situate between the southeasterly line of Garfield park, formerly known as Central park, and running thence south for a distance of 4,250 feet, more or less, thence due east a distance of 4,490 feet, more or less, to the west line of Douglas park.

The improvement hereby provided for shall be made for and under the superintendence of the West Chicago Park Commissioners and shall consist of the following, viz:

Common filling to bring the boulevard to a proper grade.

Black soil to complete the surface of the lawns.

One asphalt roadway with combined curb and gutter, 40 feet in width the entire length of the improvement.

Finishing the present roadway 40 feet in width with crushed granite and gravel top dressing, and combined curb and gutter.

A limestone macadam pavement with granite top dressing connecting the present roadway with all intersecting streets.

A cement combined curb and gutter on each side of each roadway and on each side of each intersecting street.

93 A cement sidewalk 8 feet in width, in front of and adjoining the line of all the lawns fronting on said boulevard.

A cement sidewalk 6 feet in width on all the returns of intersecting streets.

Gas-lamp posts and lamps on each side of each boulevard.

Trees along the driveway on the east and south sides of said boulevard.

Catch-basins and connections along each of said driveways.

All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance shall be filled with clay, earth, sand, gravel or cinders, free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces and all fresh filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

94 Sidewalks.

The surface of the boulevard for a space of eight (8) feet in width on each side of the boulevard next to and adjoining the lot lines, between the lines of the return curbing on all intersecting streets and alleys and the space of six (6) feet in width parallel with the lines of all intersecting streets projected between the outside sidewalk line and the curbstone line on said boulevard, shall be designated as the sidewalk spaces, and shall be brought to ten (10) inches below the established grade. Upon the above-described sidewalk space shall be laid a cement, concrete composition sidewalk, of a uniform light shade, constructed as follows: The space, when brought to the above-designated grade, shall be covered with a layer of cinders to such depth that, when thoroughly compacted by flooding, tamping and rolling, it will have a thickness of six (6) inches. On this foundation shall be laid a bed three (3) inches in thickness of Portland cement concrete, composed of five (5) parts fresh limestone, of a size not to exceed three-fourths (¾) of an inch, three (3) parts torpedo gravel, and one (1) part of the best quality of imported Portland cement, of a standard brand to be approved by the West Chicago Park Commissioners or their engineer,

95 the brand adopted to be used throughout the entire work.

This composition to be mixed according to the careful measurement of the nine (9) different parts, the cement and torpedo gravel to be first thoroughly mixed dry and then wetted only enough to form a stiff mortar, into which shall then be incorporated the five (5) parts of crushed limestone. This concrete shall then be spread on the foundation and rammed until free mortar appears on the surface, each batch to be used at once and not allowed to dry in the mortar box.

On this composition, and before the surface shall have dried, shall be laid a wearing surface one (1) inch in thickness, composed of one-half (½) fine crushed granite and one-half (½) Portland cement, of the same brand as used in the foundation. This layer to be floated perfectly smooth on the upper surface, and to be a perfect plane, with no depressions whatever. Joints shall be cut according to directions of the engineer, and indented according to directions

of the engineer, and indented finish shall be given each slab with a heavy brass or iron roller. The contractor or contractors shall execute a satisfactory bond, warranting the work so constructed against cracks, discolorations, upheaval, chipping, scaling, or
96 settlement, for a period of five (5) years from and after its completion, and that he or they will maintain said walk in perfect repair during that period of time, and all repairs necessary shall be determined upon by the said West Chicago Park Commissioners.

Lines drawn respectively twenty (20) and sixty (60) feet from the lot line on each side of said boulevard between the projected curb lines of all intersecting streets and the projected lines of all intersecting or connecting alleys and thence on said projected line to the nearest lot line on said boulevard shall be denominated as the curb lines of said boulevard.

Lawns and trees.

All spaces between the sidewalk space, as above described, up to and within six (6) inches of the curb line above described shall be improved as a lawn. It shall be brought to the established grade and the final twelve (12) inches shall be composed of black vegetable or sandy loam, free from decaying substances, stones or any other foreign material. It shall be carefully leveled off and seeded with the best quality of grass seed. Nursery-grown elm
97 trees which at a point one (1) foot above the surface of the ground shall measure not less than four (4) inches in diameter of uniform height, with good, well-balanced tops, shall be set at intervals of not less than thirty (30) nor more than forty (40) feet between the curb lines and the sidewalk space on the east and south sides of said Douglas boulevard or Douglas Park boulevard, said trees to be guaranteed for a term of three (3) years from the time of planting. The earth surrounding the roots of each tree to a radius of four (4) feet and to a depth of two and one-half ($2\frac{1}{2}$) feet shall be composed of black earth of the character above described for the lawn.

Curb & gutter.

A space of twenty-four (24) inches in width of which space six (6) inches shall be between the curb line and the lot line shall be brought to twelve (12) inches below the grade line established by the engineer of the West Chicago Park Commissioners for the gutter surface. Upon this shall be laid a layer of cinders to such depth that when thoroughly compacted by flooding, and tamping it will have a thickness of seven (7) inches. Upon this foun-
98 dation shall be laid a granite, concrete combined curb and gutter, constructed as follows:

The gutter flag shall be eighteen (18) inches in width and five (5) inches in thickness and the curbing shall be six (6) inches in thickness and not less than five (5) inches in height above the gutter flag at the summits between catch-basins. The top of the curb and the upper surface of the gutter flag shall be laid at the grades desig-

nated by the engineer of the West Chicago Park Commissioners. The upper inside edge of the curb shall be rounded to a radius of two and one-half (2½) inches. The combined curb and gutter shall be laid in alternate blocks not less than six (6) nor more than eight (8) feet long, except the corners of the intersecting streets and alleys where the blocks shall be of the length directed by the engineer of the West Chicago Park Commissioners, and rounded at said corners to such radius as he may direct. Said combined curb and gutter shall be made of concrete, consisting of one (1) part of best quality imported cement of a standard brand to be approved by the West Chicago Park Commissioners or their engineer, two and one-half (2½) parts of fine-crushed granite, and two and one-half (2½) parts of broken granite, not larger than will pass a one and one-half (1½) inch ring. This concrete shall be mixed on a clean board surface as follows:

99 The cement and fine-crushed granite shall be thoroughly mixed dry, then wetted to form a stiff mortar, into which shall be incorporated the two and one-half (2½) parts of broken granite, which shall previously have been flooded with water. This concrete shall then be thoroughly tamped into the molds or form prepared for that purpose, so as to form a solid mass, upon which shall be spread at once enough of a surface mixture composed of two (2) parts of the same cement as used for the concrete, and three (3) parts of fine granite screenings mixed dry, and then wetted enough to form a plastic mass, to insure a smooth even surface on all faces and parts of said curb and gutter which will be exposed after the completion of the improvement herein ordered. The gutter flags shall be laid to a lateral pitch corresponding with the angle towards the crown of the street, and the surface shall be smooth and laid to a true line from summit to catch-basin. Uniform openings shall be made at all catch-basins. The contractor or contractors laying said combined curb and gutter shall guarantee the same against cracking, chipping, scaling, settling or upheaval for the term of five (5) years from and after its completion, which

100 guaranty shall also include and cover any injury or displacement from the true line and grade occurring in and about or because of the building of the roadway hereinbefore and hereinafter provided for.

Roadways.

The space between the gutter flags, being thirty-seven (37) feet in width along the east and south side of said boulevard and between the return gutter flags on all intersecting streets and alleys up to the projected lot lines, shall be paved with an asphaltum roadway constructed as follows:

The road-bed for said pavement, after having been filled by the West Chicago Park Commissioners, shall be leveled and graded by the contractor or contractors laying said pavement to a grade eight and one-half (8½) inches below the final grade of said roadway as established by the West Chicago Park Commissioners or their engineer, and shall be thoroughly rolled with a steam roller weighing

not less than ten (10) tons. The crown of said roadway shall not exceed five (5) inches at the summit between catch-basins.

101 Upon this surface shall be laid a foundation of hydraulic cement concrete six (6) inches in thickness, to be made as follows:

One measure of best quality freshly burned American cement and two measures of clean, sharp, washed sand, free from clay, shall be first thoroughly mixed dry and then made into mortar with the least possible amount of water. Broken stone of a size not to exceed two and one-half (2½) inches in their largest diameters, drenched with water, but containing no loose water in the heap, shall be incorporated immediately with the mortar in such quantities as will give a surplus of mortar when rammed. This proportion, when ascertained, shall be regulated by measure. Each batch of concrete shall be thoroughly mixed, the mixing being continued on the board until each peace of stone is completely coated with mortar. It shall then be spread and at once thoroughly compacted by ramming until free mortar appears upon the surface. The whole operation of mixing and laying each batch shall be performed expeditiously. The upper surface shall be made parallel with the surface of the pavement to be laid. Across all intersecting streets and alleys on a line with the lot lines projected, shall be laid on edge an oak plank or header, three (3) inches thick and twelve (12) inches wide, to serve as a protection to the lateral edges of

102 the pavement to be laid. On the foundation thus prepared and as above described shall be laid the wearing surface or pavement proper, which shall have a thickness, after having received its ultimate compression, of two and one-half (2½) inches. This pavement shall be composed and laid as follows:

Refined Trinidad asphalt, obtained from the pitch or asphalt lake in the island of Trinidad, residuum of petroleum oil by distillation, fine sand containing not more than one (1) per cent. of hydrosilicate of alumina and fine powdered carbonate of lime. The petroleum oil shall be freed from all impurities and brought to a specific gravity of not less than eighteen (18) nor more than twenty-two (22) degrees Beaume and to a fire-test of two hundred and fifty (250) degrees Fahrenheit. The matrix of the pavement called asphaltic cement shall be manufactured by molding and mixing the two hydrocarbons known as the residuum of petroleum oil and refined Trinidad asphaltum, and the asphaltic cement when so made shall have a fire-test of two hundred and fifty (250) degrees Fahrenheit, and at a temperature of sixty (60) degrees Fahrenheit, shall have a specific gravity of one and nineteen-hundredths (1.19).

103 The above-specified ingredients for making the asphaltic pavement to be used upon said roadway shall be mixed in the following proportions of weight:

Of pure refined Trinidad asphalt one hundred (100) parts; of residuum of petroleum oil by distillation, sixteen (16) parts. The asphaltic cement having been made in the manner above described, shall be formed into a paving mixture by combining and mixing the following materials in the proportions here stated, to wit:

Asphaltic cement, not more than sixteen (16), nor less than thirteen (13) parts; sand, not more than eighty (80), nor less than seventy-four (74) parts; and pulverized carbonate of lime not more than ten (10) nor less than seven (7) parts.

In order to make the pavement homogeneous, the proportion of asphaltic cement may be varied within the limits aforesaid, according to the quality and character of the sand. The sand and asphaltic cement shall be heated separately to three hundred (300) degrees Fahrenheit. The pulverized carbonate of lime while cold shall be mixed in the hot sand in the above-required proportions, and shall then be mixed with the asphaltic cement at the required temperature in an apparatus which will effect a perfect mixture. This paving mixture shall be brought to the ground at a temperature of not less than two hundred and forty (240) nor more than three hundred (300) degrees Fahrenheit. It shall then be
104 carefully spread by means of hot iron rakes in such a manner as to give a uniform and regular surface and to such depths that after having received its ultimate compression by rolling it will have the thickness above specified. The surface shall then be compressed by hand rollers, after which hydraulic cement in the proportion of not less than one barrel to each thousand yards of surface shall be spread over the surface to bring it to a uniform light color, and the surface shall then be thoroughly compressed by a steam roller, weighing not less than ten (10) tons, the rolling being continued for not less than five (5) hours for every thousand yards of surface. Said work shall be executed under the official inspection of the board of West Chicago Park Commissioners. The contractor or contractors doing the work shall be required to guarantee that the pavement shall be and continue at all times in good condition, extraordinary wear and tear excepted, during and at the end of a period of five (5) years, from and after its completion.

The space between the gutter flags being thirty-seven (37) feet in width along the west and north sides of said boulevard, shall have a top dressing of fresh granite. The present roadway shall be brought to a grade four (4) inches below final grade of said
105 roadway when completed, and upon said surface shall be spread granite macadam of the size known as "medium," to be covered with a coating of screened bank gravel in the proportion of not less than one cubic yard to each eighteen (18) square yards of the surface of the roadway for the purpose of binding said granite macadam; upon this shall be spread a coating of fine crushed granite, said granite macadam when finished to be of a depth of four (4) inches, the surface of the same shall be thoroughly rolled with a steam roller, weighing not less than ten (10) tons, the rolling being continued until said macadam material shall have received its ultimate compression. The material on the present roadway that it becomes necessary to remove, to bring the surface of said roadway to said grade of four (4) inches below the final grade shall be used to bring all places in said roadway that are now below the said grade of four (4) inches up to said grade, and should there not be enough of said surplus material for said purpose, crushed lime-

stone shall be used, being composed of crushed limestone, thoroughly screened and of a size not to exceed two (2) inches in greatest diameter.

The space between the gutter flags on intersecting streets and between the line of the roadway last above described and the
106 nearest projected line of said boulevard shall be filled to within ten (10) inches below the final grade of said intersections, and the filled space be thoroughly rolled with a steam roller weighing not less than ten (10) tons. On the surface so prepared shall be spread and thoroughly rolled with a steam roller, as above described, thoroughly screened limestone macadam or crushed limestone of a size not to exceed two and one-half ($2\frac{1}{2}$) inches in the largest diameter to a depth of six inches. Upon this limestone macadam shall be laid a granite macadam top dressing, prepared and laid exactly as above specified for the granite top dressing of the roadway last above mentioned.

Catch-basins.

Forty-two catch-basins shall be constructed along the line of each of the described roadways on the side of the said roadway opposite the nearest lot line; to be built at the lowest points of the gutter lines between the summits. Said catch-basin shall be four (4) feet in internal diameter, built of two rings of brick upon a floor of two (2) inch common pine planks each catch-basin to be constructed with nine (9) inch half strap and connected with the sewer
107 with nine (9) inch pipe. The brick-work shall be seven (7) feet, two inches deep, the top of the cover shall be set at the grade of the boulevard where the basin is located. All covers used shall be of good-quality, cast iron. All covers shall be of the city pattern and of the same weight and pattern as the covers now in use in the lawns of West 12th street and Ogden Avenue boulevards.

Lamp posts and lamps.

A row of gas lamp posts and lamps shall be placed on each side of each boulevard throughout the whole length of the improvement herein provided for, such lamp posts shall be connected with the gas mains, and set one hundred (100) feet apart in the lawn space two (2) feet from the curb line; the lamps to be of the pattern known as the boulevard lamp.

Materials.

The contractor for each of such materials will furnish and deliver the same, performing the work incident thereto when and where directed by the engineer in charge.

108 Pipe.

Each class of work to be commenced within five (5) days after written notice from the secretary of the West Chicago Park Commissioners, and to proceed regularly and uninterruptedly to com-

pletion within the time agreed upon in the contract to be awarded, unless otherwise ordered by the engineer in charge.

Payments.

Payments are to be made upon monthly estimates furnished to the board of West Chicago Park Commissioners by their engineer, and approved at any regular meeting of said board, in sums of not less than one thousand dollars ($1,000) for each estimate except as to the final estimate. Fifteen (15) per cent. of each estimate to be deducted and withheld until the final completion and acceptance of said work by said park commissioners. All of the material furnished and all of the work done under these specifications must be first class in all respects, and the West Chicago Park Commissioners shall decide all matters arising in reference to said material, or work done, or the quality or character thereof.

109 Also an ordinance of West Chicago Park Commissioners of August 4, 1896 (offered by petitioner, *supra*), which is as follows:

For a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the West Chicago Park Commissioners in regular meeting assembled:

SEC. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates, transmitted by said West Chicago Park Commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special
110 assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the county court of Cook county, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case number 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore, and on the 28th day of March, A. D. 1896, declared void by the supreme

court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers, and superintendence of work; now

111 Therefore, be it ordained:

SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

SEC. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SEC. 4. This ordinance shall be in force from and after its passage.

Also the following resolution:

"Be it resolved and ordered, That the following estimate be adopted as the estimate of this board, of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park, to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost

112 of said improvement, in accordance with the act in said ordinance mentioned."

Also the estimate, which is as follows:

*Estimate of Cost of Improvement and Report Thereon.*

The following is an estimate made by the West Chicago Park Commissioners of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, said estimate being made in pursuance of an ordinance of the West Chicago Park Commissioners passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement; which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners relating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

113 *Estimate.*

| | |
|---|---|
| Asphalt paving | $110,420.71 |
| Macadam paving | 35,087.81 |
| Combined curb and gutter | 28,045.34 |
| Cement sidewalk | 24,262.26 |
| Filling | 17,290.20 |
| Trees | 1,110.30 |
| Catch-basins and connections | 3,819.59 |
| Gas-lamp connections | 2,106.00 |
| Manhole covers, sand, cement, brick, pipe | 1,066.89 |
| General labor, teaming, engineering, surveying, and inspection | 19,770.51 |
| Expense of making and levying this assessment | 7,287.59 |
| Total cost of improvement | $250,207.20" |

The petitioners also offered in evidence the assessment-roll on file in the cause; which assessment-roll is the same contained in the record of the cause and is here omitted by agreement of parties.

In connection with the testimony of the petitioners, it was conceded that the said boulevard was completed in its present
114 condition before the petition in this cause was filed.

It was also, in connection with the said testimony, agreed between the parties that the said ordinance passed by the said park commissioners March 28th, 1893, was the same ordinance which was in question and considered by the supreme court in the case of Culver *vs.* The People, 161 Ill., page 89.

To the evidence above offered the objectors objected for the reasons following:

1st. That the original ordinance for the said improvement, dated March 28th, 1893, was wholly void and furnished no lawful basis for the making of the said assessment nor for the said proceedings.

2nd. That the ordinance of August 14th, 1896, gives no particulars for the said improvement, and for that reason, among others, is not in accordance with the terms of the statute.

3rd. That the estimate upon which this assessment was based was not authorized by law under the circumstances, the work having all been done at the time the ordinance was passed.

4th. No showing has been made of the actual cost of the
115 present improvement, and that cost, under the circumstances, is the only lawful basis for the assessment.

5th. That no petition of property-owners is proven, as required by the statute of 1873.

6th. The other statutory requirements have not been proven.

All of which objections were overruled; to the ruling of the court upon each of which said objections counsel for the objectors then and there duly excepted.

Petitioners thereupon rested.

Thereupon the said objectors moved the court to dismiss the said petition for the reasons:

1st. That the preliminary statutory requirements have not been shown to have been complied with.

2nd. For each of the reasons mentioned in the objections filed by said objectors.

3rd. For each of the reasons stated in the written motion filed by said objectors and above herein set forth.

4th. On the ground that the improvement provided for in the ordinance is double; that the ordinance is therefore defective.

And said objectors called the court's attention to the 14th
116 amendment to the Constitution of the United States, and contended that the present assessment on the property of each of the said objectors was contrary to the provisions of the said 14th amendment in two respects—*i. e.:*

1st. That it imposed an unlawful burden upon said objectors and deprived them of their property without due process of law.

2nd. That it denied these objectors the equal protection of the laws.

Which said motion to dismiss, being considered by the court upon all the grounds above mentioned, was denied; to which ruling of the court upon said motion the said objectors severally, by their counsel, then and there duly excepted.

Thereupon the said objectors, by their counsel, moved the court to strike out of the said assessment-roll all the amount included therein in excess of the actual cost of the said work, and desired the court to retain the said motion and consider the same in view of the evidence which would be produced upon that point; and the court thereupon stated that it would hear all motions or legal objections which counsel sought to make, but would pass upon them all in turn at the conclusion of the evidence.

117–208 Thereupon counsel further moved the court to strike out from the said assessment-roll all the amount included therein in excess of the amount for which the original assessment was confirmed against the property described in said objections by the general order of confirmation entered at the June term, 1893.

Counsel for said objectors also moved the court to recast the assessment-roll as to the property of said objectors (and others, if the court thought necessary), so as to distribute the said cost upon the property assessed in proportion to the benefits derived by the said improvement.

And the said objector, Josiah L. Lombard, by his counsel, moved the court to strike out all the assessment against his property described in said assessment-roll and in said objections, in excess of $1,000, pursuant to an agreement with him by the petitioners for that purpose; and the said objector, Lombard, further moved the court, in case the said motion last above mentioned should be denied, to strike out from said assessment against his property the whole amount assessed against it in excess of $3,000.

And thereupon, in support of said motions and in pursuance of the direction of the court above stated, the objectors offered the following evidence:

209 * * * * * * *

Which portion of said judgment is as follows:

"And the court, being fully advised in the premises and having full jurisdiction of the subject-matter of the said assessment
210 and of all the parties interested therein, further finds:

That Josiah L. Lombard is the owner of the west 383½ feet (except the west 33 feet thereof, and also except the east 66 feet of the west 365 feet thereof) of lot or block 1 of Douglas Park addition, in section 24, township 39 north, range 13 east, of the third principal meridian; that said west 300 feet of said lot or block 1 is contiguous to and abutting upon said Douglas boulevard so proposed to be improved.

And the court further finds that the said Josiah L. Lombard, by consent in open court, has agreed that said west 300 feet of said lot or block 1, in said Douglas Park addition to Chicago, should be included in the assessment-roll made and filed by the commissioners heretofore appointed by this court in this cause, and that said west 300 feet of said lot or block 1, so owned by said Josiah L. Lombard, is specially benefited to the extent of $1,000 by reason of the proposed improvement of said boulevard.

And the court therefore, upon the consent in open court of the said Josiah L. Lombard, orders and directs that the said west 300 feet of said lot or block 1, in said Douglas Park addition,
211–309 so owned by the said Josiah L. Lombard, be specially taxed the sum of $1,000 for benefits accruing to said parcel of land by reason of said proposed improvement of said boulevard.

And the court further orders that said sum of $1,000 so specially taxed and levied, by and with the consent of the said Josiah L. Lombard, against said parcel of real estate last above described for benefits resulting thereto by reason of said improvement be, and the same is hereby, confirmed as a just, valid, and binding special tax against said parcel of land for the uses and purposes aforesaid, which said sum of $1,000 is to be enforced and collected against said parcel of real estate so owned by the said Josiah L. Lombard in the manner provided by law."

* * * * * * *

310 To the honorable the judge of the county court of said county:

Your petitioner, The Town of West Chicago, being a regularly organized and existing township in the county of Cook and State of Illinois, under and by virtue of the statutes of said State providing for township organization, respectfully petitions this honorable court, in accordance with the statutes in such case made and provided, as follows:

Your petitioner shows that the West Chicago Park Commissioners, — now existing in a town which is now included within the limits of the city of Chicago and State of Illinois, having authority by law to acquire land and the appurtenances, in trust, for the inhabitants of such town and of a division or a part of such city and of such parties or persons as may succeed to the rights of such inhabitants, and for the purpose of a public promenade and pleasure

grounds and ways, but not for any other use or purpose, without the consent of the majority by frontage of the owners of the property fronting on the same and without the power to sell, alienate, mortgage, or encumber the same, which board of park commissioners was duly organized under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to amend the charter of the city of Chicago and to create a board of park commissioners and authorize a tax in the town of West Chicago and for other purposes," approved and in force February 27,
311 1863, and of the acts and parts of acts amendatory thereto; that by the provisions of said act the said board of West Chicago Park Commissioners was given full and exclusive power to govern, manage, and to direct all parks, boulevards, and ways authorized by that act and by them purchased, made, laid out, or established, to lay out, regulate, make, and improve the same, pass ordinances and issue and enforce orders for the regulation and government of the same; to levy special assessments on all property by them deemed benefited by the purchase, opening, and improvement of such parks, boulevards, and ways, as provided and limited by said act, and in general was given by said act power and authority to lay out, establish, and improve parks, boulevards, and pleasureways, as described in said act; that in and by said act above mentioned and by a subsequent act of the General Assembly of the State of Illinois entitled "An act supplemental to an act to amend the charter of the city of Chicago, to create a board of park commissioners, and authorize a tax in the town of West Chicago, and for other purposes, approved February 27, 1869," approved and in force April 19, 1869, it was provided that said West Chicago Park Commissioners should have the power and authority to locate the boulevard, promenade, driveway, and pleasureway in such manner as in said act and supplemental act are more specific-
312 ally described, so as to connect the several parks so authorized by said original and supplemental acts to be located.

That pursuant to the authority conferred upon said West Chicago Park Commissioners by virtue of said original and supplemental acts such commissioners did locate a boulevard or pleasureway in the city of Chicago, Cook county, Illinois, and within the limits defined by said original and supplemental acts between the southeasterly line of Barrypoint road, now known and designated as Colorado avenue, said Barrypoint road or Colorado avenue being the southeastern boundary of Garfield park, and thence running south a distance of 4,250 feet, more or less, and thence east 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, said Douglas park being one of the parks located and established under and by virtue of said original and supplemental acts, and now under the management and control of said commissioners; that said boulevard or pleasureway so located and established by said commissioners connects Garfield park (the same being one of the parks so located pursuant to the provisions of said original and supplemental acts and now under the management and control of said commissioners) with the said Douglas park, and that such con-

nection by said boulevard between said Garfield and Douglas parks is accurately shown and defined upon the route, plan, and
313 design indicated and specifically described in the drawings or maps hereto attached and marked "Exhibit A."

That in the location of said boulevard said commissioners were authorized by said acts above mentioned to locate the same in any part of the town of West Chicago, and in sections 14, 23, and 24, T. 39 N., R. 13 E., of 3d P. M., all of said sections lying and being situate in the town of West Chicago, and within the city of Chicago, as set forth in said original and supplemental acts.

That the jurisdiction of said West Chicago Park Commissioners was by said original and supplemental acts made and now is absolute and undisputed, and it was further provided by said original and supplemental acts that said West Chicago Park Commissioners should have the right and authority to cause property benefited by the location of such boulevard to be specially assessed to pay for the improvement thereof.

And your petitioner further shows that under and by virtue of the provision of the acts of the General Assembly above cited the said West Chicago Park Commissioners did proceed about the year 1869 and 1870 to lay out and acquire the lands necessary for the boulevards hereinabove designated and hereinafter more par-
314 ticularly described by the maps and plan hereto attached and heretofore referred to as "Exhibit A." and did acquire by condemnation, purchase, gift, or otherwise all of the lands included in said boulevard or pleasureway so described, and did enter upon the possession of the same during or about the year 1869 or 1870; that said commissioners did mark out the boundaries of said boulevard, and that said boulevard so acquired by said commissioners was defined as a piece or parcel of land not less than 250 feet in length at any point, nor more than 400 feet in width at any point, as will be shown by maps and plans thereof hereto attached and so marked "Exhibit A."

That said commissioners have remained in possession and control of said boulevard or pleasureway from about the year 1870 hitherto, and that the same has never been improved as a boulevard or pleasureway and promenade, as it was intended that the same should be improved, by the provisions of the said original and supplemental acts and other acts of the General Assembly of the State of Illinois passed and approved subsequent to the said original and supplemental acts, nor according to the authority and power vested in said West Chicago Park Commissioners under an act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public
315 parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873; under and by virtue of which said act last cited the corporate authorities of towns in which any such parks or boulevards are located were authorized to levy a special assessment or special tax on the contiguous property abutting on any such boulevard for the purpose of paying the cost of

improving the same; that said boulevard so proposed to be improved and so connecting Garfield park with Douglas park, is a part and parcel of the original boulevard and system of parks and pleasureways authorized and designated to be established and acquired by the West Chicago Park Commissioners by virtue of said original and supplemental acts, and was intended for the purpose of connecting said Garfield park with said Douglas park, according to the provisions of said original and supplemental acts.

And your petitioner further shows that said West Chicago Park Commissioners are now in control and management of said boulevard so proposed to be improved, and have been in the possession and control thereof for a period of more than twenty years; that all of said boulevard lies and is situated in the town of West Chicago, Cook county, Illinois.

316 And your petitioner further shows that the said West Chicago Park Commissioners, desiring to improve that certain boulevard hereinbefore described as Douglas boulevard or Douglas Park boulevard, so extending south from the southeasterly line of Barrypoint road or Colorado avenue, above mentioned, a distance of 4,240 feet, more or less, and thence due east to the intersection thereof with the west line of Douglas park, a distance of 4,490 feet, more or less, did carefully designate the line of said improvements and did prepare a plan or plans thereof, and did prepare estimates of the cost of such contemplated improvement, together with specifications therefor, and did transmit such plan, specifications, and estimates to the supervisor, assessor, and clerk of the town of West Chicago, in which said boulevard is located, said supervisor, assessor, and clerk being the corporate authorities duly designated by said act of the General Assembly, so approved May 2, 1873, as the corporate authorities of said town to levy a special tax or special assessment for the purpose of paying the cost of said contemplated improvement of said boulevard; that said West Chicago Park Commissioners also obtained the consent and authority in writing, in due form of law, of the owners of a majority of the property or land abutting upon said boulevard so proposed to be improved by

317 the said consent or petition of a majority of such owners of the property or land so abutting upon said boulevard. The said West Chicago Park Commissioners were asked and petitioned to make such improvement according to the plans and specifications and estimate of the cost thereof so transmitted and presented by the said West Chicago Park Commissioners to the supervisor, the assessor, and town clerk, said corporate authorities to carry out the purposes and objects of the said statute hereinbefore referred to as having been approved May 2, 1873.

And your petitioner further represents that said petition was found by said West Chicago Park Commissioners and determined by them to contain the consents and signatures and petition of the owners of a majority of the lots, lands, and property fronting and abutting on said Douglas boulevard or Douglas Park boulevard so proposed to be improved to the making of such improvements and to the making and levying of a special tax or special assessment

upon the property abutting on said boulevard for the purpose of paying the cost of such improvement as proposed.

And your petitioner further represents that the said supervisor, assessor, and clerk, the duly designated and constituted cor-
318 porate authorities of the town of West Chicago, as aforesaid, also found that the owners of a majority of the property, lots, and land fronting and abutting on said boulevard between the south line of Barrypoint road or Colorado avenue, running south a distance of 4,250 feet, more or less, thence east a distance of 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, in said city of Chicago, had in fact consented to the improvement of said boulevard as and for a boulevard and driveway, according to the plans and specifications so transmitted and presented to said corporate authorities of the town of West Chicago, as aforesaid, and to the making and levying of a special assessment or special tax upon the property, lots, and lands contiguous to and abutting upon said boulevard so proposed to be improved, for the purpose of paying the cost of said improvement, the cost and expenses of making, levying, and collecting the same, and that the owners of a majority of the property so fronting or abutting on said boulevard had petitioned and requested said West Chicago Park Commissioners, so being in the control and management of said boulevard, to make said improvement and to cause a special assessment or special tax to be levied on the property abutting on said Boulevard for the purpose of paying the cost thereof,
319 and that the proceedings therefor and in that behalf should be conducted and carried forward in pursuance of the provisions of the act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1, 1873, and in pursuance of any and all other statutes of the State of Illinois in such case made and provided for the purpose of making, completing, and paying for the improvement of said Douglas boulevard according to said plans, specifications, and estimates.

The plan of said improvements so to be made upon said Douglas boulevard hereinbefore referred to as "Exhibit A" follows herewith and is made a part hereof.

The specifications so made by the said West Chicago Park Commissioners and so transmitted and presented to said corporate authorities of said town of West Chicago herewith follow and are marked "Exhibit B" and made a part hereof.

The exhibits that were attached to this petition are found elsewhere in this bill of exceptions and are here omitted by agreement of parties.

320 It was admitted by the parties that objections were filed in the original cause on behalf of all the property here objecting and above described in paragraphs 3 and 4 of said act as above recited, and said objections are omitted here by agreement.

STATE OF ILLINOIS, } ss:
*County of Cook,* }

In the County Court of Cook County, to the June Term Thereof, A. D. 1893.

In the Matter of the Petition of the Corporate Authorities of the Town of West Chicago for the Appointment of Commissioners to Make an Assessment to Pay the Cost of the Improvement of Douglas Boulevard from the Southeasterly Line of Garfield Park to the West Line of Douglas Park, in the Town of West Chicago, Cook County, Illinois.

Before Honorable Frank Scales, judge of the county court of Cook county.

*Order of Confirmation.*

321 And now, on this eighth day of July, A. D. 1893, the same being one of the days of the June term of this court, the matter of the said above-entitled petition coming on to be heard by and before the court upon the sufficiency and validity of said petition and all proceedings thereunder, including the acts of the commissioners heretofore appointed in this cause and of the returns made by them and the sufficiency and validity thereof, in the matter of the assessment-roll by them made and prepared, the oath of office by them taken, the affidavits of mailing and posting notices, and the certificate of publication of notice herein, as well as upon the objections to the said assessment hereinbefore filed in this cause, the corporate authorities of the town of West Chicago, constituted by law as the corporate authorities for such purpose, appearing by Francis A. Riddle, their attorney, and the objectors hereinafter named appearing by their attorneys of record, the said corporate authorities of the town of West Chicago, by their said attorney, moving the court to confirm the said special assessment filed herein with the clerk of this court on the 28th day of April, A. D. 1893, and also moving that the said court should make such order or orders
322 in the premises as should to it seem just and proper and in accordance with the statutes in such cases made and provided, and the introduction of testimony by the petitioner herein upon the hearing of this cause, and upon the hearing of the evidence submitted to the court by the objectors to said special assessment hereinafter named, and after hearing of testimony offered by the objectors hereinafter named, and upon due proof in open court made by the petitioner of the consent in writing and of the sufficiency and validity of the petition of the owners of more than the majority of the lots, blocks, and lands abutting on said Douglas boulevard between the southeasterly line of Garfield park and the west line of Douglas park, and of the consent of the majority of the owners of said blocks, lots, and lands so abutting — aforesaid to the making and levying of the special tax or assessment to pay the cost of said improvement, the court now here finds that all of the allegations in said petition filed by said corporate authorities herein

are true in substance and in fact, and that the West Chicago Park Commissioners are a board of park commissioners now existing in a town which is now included within the limits of the city of Chicago and State of Illinois, being authorized by law to acquire land and the appurtenances in trust for the inhabitants of
323 such town and of the division or part of such city and of such parties or persons as may succeed to the rights of such inhabitants, for the purposes of a public promenade or pleasure grounds or ways, but not for any other use or purpose without the consent of the majority, by frontage, of the owners of the property fronting on the same, and without the power to sell, alienate, mortgage, or encumber the same, which board of park commissioners was duly organized under and by virtue of the provisions of an act entitled "An act to amend the charter of the city of Chicago, to create a board of park commissioners and authorize a tax in the town of West Chicago, and for other purposes," approved and in force February 27th, 1869, and under and by virtue of other acts amendatory thereto, and that said West Chicago Park Commissioners are still a corporation existing under and by virtue of the authority of said acts of the General Assembly of the State of Illinois; that by the provisions of the said acts of the said General Assembly of the State of Illinois the said West Chicago Park Commissioners were given full and exclusive power to govern, manage, and direct all parks, boulevards, and ways authorized by the said acts and by the said West Chicago Park Commissioners purchased, made, laid out, or established, to lay out, regulate,
324 make, and improve the same, to pass ordinances, to issue and enforce orders for the regulation and government of the same, to levy special assessments upon all property by them deemed benefited by the purchase, opening, and improvement of said parks, boulevards, and ways as limited by said acts, and in general were given by said acts power and authority to lay out, establish, and make parks, boulevards, and pleasureways, as described in said acts of the General Assembly; that by subsequent acts of the General Assembly, as described in said petition, the West Chicago Park Commissioners were authorized and given power and authority to locate a boulevard, promenade, driveway, and pleasureway in such manner as in said acts are more specifically described, which acts are referred to in the petition herein, so as to connect said Garfield park (formerly known as Central park) with said Douglas park; that by virtue of said acts of the General Assembly the said West Chicago Park Commissioners were authorized to connect the said boulevard with any part of the town of West Chicago, and in sections 14 and 23, township 39 north, range 13 east, of the third principal meridian, which said sections are a part and parcel of the town of West Chicago, and lie within the park district described in the afore-
325 mentioned acts of the General Assembly of the State of Illinois.

And the court finds that said Douglas boulevard, as above described, is within the control and jurisdiction of the West Chicago

Park Commissioners for purposes of improvement as a public boulevard, driveway, and promenade as provided by law.

And the court further finds that the said West Chicago Park Commissioners, desiring to improve said boulevard, as described in said petition, had due authority of law to make and adopt the estimate and to make the application to the corporate authorities of the town of West Chicago, as set forth in the petition filed herein, in the name of said town, by the supervisor thereof, and that said West Chicago Park Commissioners did in fact and in due form make an estimate of the cost of said improvement so proposed to be made, and did in due form of law make and adopt plans and specifications for said improvement, and did in due form of law transmit and present said estimate, plans, and specifications, together with the application and request of said West Chicago Park Commissioners in that behalf, to the said corporate authorities of the town of West Chicago, to wit, the supervisor, assessor, and clerk of said
326 town, as and in the manner set forth in said petition, and that all of the steps and proceedings taken by said West Chicago Park Commissioners in that behalf, and all of the steps and proceedings taken by the said corporate authorities of said town of West Chicago pursuant to the request of said West Chicago Park Commissioners, were and are in all things regular and binding according to law, and the same are hereby approved, ratified, and confirmed by this court for the purposes aforesaid.

And the court further finds that pursuant to the petition filed by the corporate authorities of the town of West Chicago three duly qualified persons were appointed by this court to make and levy a special tax or assessment upon the property abutting on said boulevard so proposed to be improved; that said commissioners took in due form the oath of office required by law to be taken by such commissioners; that after taking such oath said commissioners proceeded to go upon and examine the lots and locality where said improvement is proposed to be made, and the lots, blocks, tracts, and parcels of land that would be specially benefitted thereby, and that such commissioners found that the property contiguous to and abutting upon the boulevard so proposed to be made would be benefitted to the extent of the cost of said improvement as estimated by said West Chicago Park Commissioners, and that
327 such commissioners did apportion and assess the amount so found to be of benefit to the property abutting on said boulevard upon the several lots, blocks, tracts, and parcels of land abutting thereon in proportion as in their judgment they would be severally benefitted by said improvement.

And the court finds that no lot, block, tract, or parcel of land has been assessed a greater amount than it will be actually benefited, except as hereinafter provided.

And the court further finds that the said commissioners made or caused to be made an assessment-roll in which there appears the names of the owners, so far as by them known, and the description of each lot, block, tract, or parcel of land, the amount assessed as special benefits thereto as found by said commissioners set down

opposite the description of said lots, blocks, tracts, or parcels of land, and that said assessment-roll, when so completed by said commissioners, was returned to and filed in this court by said commissioners on the 28th day of April, A. D. 1893, which day and date was at least ten days before the first day of the May term of this court.

And the court further finds that the said commissioners so appointed by this court did, as provided by law, send by mail to each owner of the premises so assessed whose name and place of
328 residence was known to the said commissioners a notice, as required by law, of the said assessment, and that an affidavit of the sending of said notice by mail has been filed by the said commissioners in this cause, as required by law, and that a copy of said notice was attached to the said affidavit, as required by the statute in such cases made and provided, and also that a notice of the said assessment was given by the said commissioners by posting a copy of such notice in at least four public places in the city of Chicago, two of which were in the neighborhood of said proposed improvement, as is shown by the affidavit of said commissioners filed herein, which posting of said four notices by the said commissioners was done on the 28th day of April, A. D. 1893, and that the said commissioners further gave notice, as required by law, of the said assessment by publication of said notice for ten successive days in the Chicago Mail, said Chicago Mail being a daily newspaper published in the city of Chicago and of general circulation throughout Cook county and the State of Illinois, and that the date of the first paper containing such notice was the 28th day of April, A. D. 1893, and the date of the last paper containing such notice was the 9th day of May, A. D. 1893, and that a certificate in due form of
329 law of the publication of said notice was filed in this court in this proceeding on the 9th day of May, A. D. 1893; and the court here and now approves and confirms all of said notices and the publication thereof as above set forth, and finds the same in all respects to have been given and published in the manner and form as required by law.

And the court further finds that by virtue of the notices so given and published as hereinabove recited and found all persons interested in the lots, pieces, and parcels of land specially taxed for the cost of said improvement of said boulevard, and that all persons owning lots, blocks, pieces, or parcels of real estate abutting on said boulevard so to be improved, had due notice, according to the statutes of the State of Illinois in such cases made and provided, that the matter of said special tax or special assessment for the purpose of paying the cost of improving said boulevard would be heard and would come on for hearing on the first day of May term of this court, which term commenced on the second Monday, being the 8th day, of May, A. D. 1893; that on the 10th day of May, 1893, the same being one of the days of the term of this court, an order was entered by this court requiring all persons interested in the matter of said special tax or special assessment to make objections thereto *on* or before ten
330 o'clock in the forenoon of the 12th day of May, 1893, and that said assessment should be in all things approved

and confirmed as to all persons interested therein who did not appear and object to the same according to law *on* or before 10 o'clock of said 12th day of May, 1893, and that on said 12th day of May, 1893, said assessment in all things was by the order of this court duly confirmed and approved, except as to the lots, blocks, pieces, and parcels of land hereinafter particularly mentioned, to which lots, being the lots hereinafter mentioned, objections had been duly filed by parties interested therein in this court on or before said 12th day of May, 1893, and as to the lots, blocks, pieces, and parcels of land so hereinafter mentioned and the persons interested therein the hearing and determination of said objections was continued from time to time by order of this court until the present day, upon which a final hearing as to the whole matter of the said assessment, and particularly as to the objections made by the owners or persons interested in the lots, blocks, pieces, or parcels of land hereinafter mentioned, comes before the court for final hearing and disposition.

And the court, having full jurisdiction, as aforesaid, in the premises and of the subject-matter and of all of the parties interested in said assessment, further finds that Philip M. Prescott, as the
331 owner of lots 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, in subblock 2, in block 1, and of lots 14, 15, 16, 17, 18, 19, 20, 21, of block 2, and lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, in subblock 2; 22 and 23, in subblock 2 of block 5 of Prescott's Douglas Park addition to Chicago, said addition being a subdivision of blocks 1, 2, 5, and 10, in the circuit court partition of the east ½ of the northeast ¼ and that part of the east ½ of the southeast ¼ (being north of the center line of Ogden avenue) of section 23, township 39 north, range 13 east, of the third principal meridian, has filed objections to the confirmation of said special tax or special assessment as against all of the lots herein last above described; and the court, being fully advised in the premises and after the introduction of evidence before the court on the part of said corporate authorities of the town of West Chicago, and also in behalf of said Philip M. Prescott, objector as aforesaid, and after argument of counsel for the respective parties, overrules said objections in all things except as to the total amount of benefits to be specially taxed or levied upon said several lots so as hereinabove last described.

The court therefore finds, by consent of the said Philip M. Prescott, in open court, that said lot 14, in said subblock 2, in block 1 aforesaid, is specially benefited to the extent of $345.95, and by
332 the consent and agreement of the said Philip M. Prescott the said lot 14, in said subblock 2 of said block 1, is hereby specially taxed in the sum of $345.95 for benefits thereto for the purpose of paying the cost of said improvement, and the said sum of $345.95 is hereby declared and made a specific lien upon said lot 14, in said subblock 2 of said block 1, for the purposes aforesaid.

And the court further finds that said lot 14, in sub-block 2, in block 2, is benefitted by reason of said proposed improvement to the extent of $345.95.

And the court therefore and by consent of the said Philip M.

Prescott, in open court, hereby specially orders that said lot 14 of sub-block 2, in block 2, be specially taxed the said sum of $345.95 for benefits accruing to said lot 14 by reason of said improvement.

As to lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, in sub-block 2 of block 5, in said Prescott's Douglas Park addition to Chicago, the court finds that said lot 1 of sub-block 2 of block 5, aforesaid, is benefited to the extent of $345.95, and that each of lots 2 to 10, inclusive, in said sub-block 2 of block 5, aforesaid, are specially benefited to the extent of $212.50 each as the special benefits resulting to each of said lots 2 and 10, inclusive, as aforesaid, by reason of said pro-
333 posed improvement.

And the court therefore orders that said lot 1, sub-block 2 of block 5, be, and the same is hereby, specially taxed the said sum of $345.95 as special benefits resulting thereto by reason of said proposed improvement, and that said lots 2, 3, 4, 5, 6, 7, 8, 9, and 10, in said sub-block 2 of block 5, so objected for by the said Philip M. Prescott, be each severally specially taxed the sum of $212.50 as the amount of benefits resulting to each of said lots 2 to 10, inclusive, by reason of said improvement, and that the respective and several amounts so specially taxed against each of said several lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 be, and the same is hereby, made a specific lien upon each of said lots last above mentioned for the amounts so severally taxed against each of the same, and that said amounts so specially taxed shall be enforced and collected against said lots 1 to 10, inclusive, in said sub-block 2, respectively, in the manner provided by law.

And the court, having full jurisdiction, as aforesaid, in the premises and of the subject-matter and of all the parties interested in said assessment, further finds:

That Lambert Tree and Anna J. Tree have filed objections to the confirmation of said special tax as to that portion of the west half of the northwest quarter of section 14, township 39 north, range 13 east, of the third principal meridian, lying southeasterly of Colorado avenue.

And the court being fully advised in the premises, and after hearing evidence on behalf of said petitioner, the corporate
334 authorities of the town of West Chicago, and also on behalf of said objectors, and after argument by counsel for the respective parties, the court here and now overrules the objections so filed by the said Lambert Tree and Anna J. Tree in all things, except as to the total amount of benefits specially taxed and levied against the said real estate last described.

And the court further finds, by and with the consent of the said Lambert Tree and Anna J. Tree, in open court, that said parcel of land so objected for by the said Lambert Tree and Anna J. Tree, as aforesaid, is justly benefited in the sum of $1,912.50, and by and with the consent and agreement of the said Lambert Tree and Anna J. Tree, as aforesaid.

The court now especially taxes and levies upon that portion of the west half of the northwest quarter of section 14, township 39

north, range 13 east, of the third principal meridian, lying southeasterly of Colorado avenue, the sum of $1,912.50.

And the court orders that said sum of $1,912.50 be, and the same is hereby, made a specific, valid, and binding special tax against the property last above described, and here orders that the special tax of $1,912.50 so levied against said real estate be and remain a just, valid, and legal special tax against said real estate so objected for by the said Lambert Tree and Anna J. Tree, to be enforced and collected against said parcel of land in the manner provided by law.

335 And the court being fully advised in the premises and having full jurisdiction of the subject-matter of the said assessment and of all of the parties interested therein, further finds:

That Josiah L. Lombard is the owner of the west 383½ feet (except the west 33 feet thereof, and also except the east 66 feet of the west 365 feet thereof) of lot or block 1 of Douglas Park addition, in section 24, township 39 north, range 13 east, of the third principal meridian; that said west 300 feet of said lot or block 1 is contiguous to and abutting upon said Douglas boulevard so proposed to be improved.

And the court further finds that the said Josiah L. Lombard, by consent in open court, has agreed that said west 300 feet of said lot or block 1, in said Douglas Park addition to Chicago, should be included in the assessment-roll made and filed by the commissioners heretofore appointed by this court in this cause, and that said west 300 feet of said lot or block 1, so owned by said Josiah L. Lombard, is specially benefited to the extent of $1,000 by reason of the proposed improvement of said boulevard.

And the court therefore, upon the consent in open court of the said Josiah L. Lombard, orders and directs that the said west 300 feet of said lot or block 1, in said Douglas Park addition, so owned by said Josiah L Lombard, be specially taxed the sum of $1,000

336 for benefits accruing to said parcel of land by reason of said proposed improvement of said boulevard.

And the court further orders that said sum of $1,000, so specially taxed and levied by and with the consent of the said Josiah L. Lombard against said parcel of real estate last above described for benefits resulting thereto by reason of said improvement, be, and the same is hereby, confirmed as a just, valid, and binding special tax against said parcel of land for the use and purposes aforesaid; which said sum of $1,000 is to be enforced and collected against said parcel of real estate so owned by the said Josiah L. Lombard in the manner provided by law.

And the court, having full jurisdiction in the premises and of the subject-matter and of all of the parties interested in the matter of said special assessment or special tax as to the objections filed by J. J. Kane and J. T. Sullivan as the executors and trustees under the will of Michael Reilly, deceased, finds that said objections should be, and the same are hereby, overruled in all things except as to the amount of special benefits resulting to lots 31 to 48, both inclusive, described in the objections last named as being in block 5, in D. Goodwin's subdivision of the northwest quarter of the northeast

quarter of section 23, township 39 north, range 13 east, of the third principal meridian, and as to the amount of special benefits resulting to said lots, from 31 to 48, both inclusive, the court finds that said lots 31 to 48, both inclusive, are specially benefited to the extent of $141.67 each, and by agreement of the parties interested in said lots 31 to 48 above described the court therefore orders that each of said lots, from 31 to 48, both inclusive, be separately specially taxed, as and for the benefits resulting to each of said several lots by reason of said proposed improvement of said boulevard, the sum of $141.67, and that the said sum of $141.67, so specially taxed and levied against each of said lots, from 31 to 48, both inclusive, be, and the same is hereby, confirmed in all things, and that the sum of $141.67 shall be and is a valid and binding special tax against each of said lots respectively, to be enforced and collected in the manner provided by law.

337

And the court, being fully advised in the premises and after hearing all of the evidence offered and produced before the court, as well on the part of the said corporate authorities of the town of West Chicago as on the part of said objectors, hereby orders that the assessment-roll herein filed, after having been corrected and amended as above ordered and directed as to the separate lots, pieces, and parcels of real estate above mentioned in the objections filed by the several owners thereof, shall be in all things fully confirmed and approved, and that the amounts above mentioned as the proper sums to be specially taxed against the several lots, blocks, pieces, and parcels of land described in the objections of said objectors are to remain as the amounts to be specially taxed against said several lots, blocks, pieces, and parcels of real estate described in the several objections filed in this court in this cause, and the special tax against the several lots, blocks, pieces, and parcels of real estate so found by this court in respect to said several objections of said several objectors shall be, and the same is hereby, confirmed in all things the same as to all other lots, blocks, pieces, and parcels of land mentioned and described in said assessment-roll, and the several sums so specially levied and taxed by said commissioners, as modified by the orders of this court, shall be a just, valid, and binding lien upon the several lots, blocks, pieces, and parcels of land so specially taxed as provided by law until the same shall have been paid in the manner herein and by law provided.

338

And the court further finds that the said special tax so ordered to be corrected by the court has in fact been made by the said commissioners in proportion, as near as might be, to the benefits resulting to the lots, blocks, pieces, and parcels of real estate so specially taxed for the purpose of paying the cost of said proposed improvement of said boulevard, and that each separate lot, block, piece, and parcel of land contained and described in said assessment-roll as abutting upon said Douglas boulevard has been in fact so specially taxed its just share of the cost of said improvement.

And the court further finds that the total sum of benefits so specially taxed upon each separate lot, block, and parcel of real estate so abutting upon said Douglas boulevard does not exceed the

amount of special benefits so specially taxed to each of the
339 said several lots, blocks, pieces, and parcels of land contained in said assessment-roll, and that all of the proceedings herein are regular and in strict conformity to law.

And the court, being fully advised in the premises, further and hereby orders that the said assessment-roll herein filed as changed, modified, and corrected, as hereinabove set forth, shall be, and the same is hereby, full- and completely confirmed in all things, and that the said special tax shall be a lien upon the several lots, blocks, pieces, and parcels of land in said assessment-roll described, to be enforced and collected according to the provisions of the statute of the State of Illinois in such cases made and provided.

And the court further finds that in and by the ordinances of the corporate authorities of the town of West Chicago authorizing and directing said special tax it was provided that the said special tax should be collected by instalments, the first of which instalments should be 20% of the amount of the special tax so made upon each lot, block, piece, and parcel of land so specially taxed, as shown by said assessment-roll.

The court therefore orders that said special tax shall be divided and payable by instalments, the first of which installments shall be 20% of the total amount of said special tax, and that the remaining portion of said special tax, after deducting said first instalment, shall be divided into four equal annual instalments, which instal-
ments shall be payable annually thereafter and collected in
340 the same manner that other assessments are now collected; that each of said last-mentioned four instalments shall bear interest at the rate of 6% per annum from the time and in the manner provided by law, and that the first above-mentioned instalment shall be due and payable from and after this date, and the commissioners and the clerks of this court are hereby ordered and directed to complete upon the assessment-roll and book returned herein to this court said special tax as hereinabove modified and corrected against the several lots, blocks, pieces, and parcels of land concerning which objections were filed and disposed of herein, and to designate in proper columns, opposite the description of the several lots, blocks, pieces, and parcels of land contained in said assessment-roll, the amount of each of said instalments as herein provided for, and to carry out and set opposite the description of each lot, block, tract, and parcel of land, so assessed, the amount of said several assessments payable as above provided.

And the court, being fully advised in the premises and having full jurisdiction of the subject matter thereof and of all of the parties interested therein, finds that William D. Rawlins, Daniel J. McMahon, and Humphrey Moynihan, the commissioners appointed by this court to make and levy said special tax, are entitled to be paid for their services in that behalf, out of the funds so specially levied, when collected, the sum of $600 each.

And the court therefore orders that the said William D. Rawlins,
Daniel McMahon, and Humphrey Moynihan, as such com-
341 missioners, be paid, out of the funds realized from said special

tax, when collected, the sum of $600 each, in full payment for their services as such commissioners in that behalf.

And it appearing to the court that the West Chicago Park Commissioners, being the corporate authorities authorized by law to receive and collect said special tax, have in due course of business, by ballot, nominated and selected George F. Talty to be the special collector to collect said special tax in the manner and form provided by law—

It is therefore ordered by this court that said George F. Talty be, and he is hereby appointed and confirmed by this court as the special collector to take charge of the collection of the special tax herein made and confirmed, to collect and pay over the same to said West Chicago Park Commissioners, full power and authority being given him to make any and all such collections, and to give proper receipts and acquittances therefor, and to make return of all delinquent instalments upon any or all of the lots, blocks, pieces, and parcels of land contained in said assessment-roll upon which any or all of said installments shall be and remain unpaid after the same has become due and payable in the manner and form provided by law and as directed by said West Chicago Park Commissioners.

And the court further orders that the said George F. Talty be required to give a good and sufficient bond, conditioned for the faithful performance of his duties as such special collector
342–418 and the proper paying over and accounting for all moneys coming into his hands as such special collector, and that the penalty of such bonds and the sufficiency and qualifications of the sureties thereon shall be fixed and determined by the West Chicago Park Commissioners.

419 * * * * * * *

Which was all the evidence offered or received at the hear-
420 ing of the motions and legal objections in the above-entitled cause.

Thereupon the said objectors upon the said evidence requested the court to pass upon their motion to strike out of the said assessment-roll all the amount included therein in excess of the actual cost of the said work, claiming to have shown by the testimony of the said witness, George W. Dorr, what the original cost of the said work actually was; which motion the court denied; to which action of the court the said objectors then and there, by their counsel, duly excepted.

Thereupon the said objectors moved the court to dismiss the said cause on the ground that the ordinance for the original assesssment, upon which the present proceeding was based, is void; which motion was denied; to which action of the court in denying the said motion the said objectors then and there duly excepted.

Thereupon the objectors moved the court to strike out of the said assessment-roll all the amount assessed against any of the property of said objectors in excess of the amount charged against the said property respectively by the original order of confirmation entered

at the June term, A. D. 1893; which motion was denied; to which action of the court in denying the said motion the said objectors, by their counsel, then and there duly excepted.

Thereupon the objectors moved the court to recast the said roll so as to charge upon the property assessed herein and included in said objections, lying upon the east side of the said portion of the boulevard extending from north to south, and upon the south side of the portion of the boulevard extending from east to west, a larger
421 proportion of the total cost of the said improvement than upon the other side, claiming to have proven by the evidence aforesaid that the property abutting on said boulevard on the east and south sides was benefitted in a larger proportion than the property on the other sides thereof; which motion the court denied; to which action of the court in denying the said motion the objectors for the property affected thereby then and there, by their counsel, duly excepted.

The said objector, Lombard, thereupon moved the court to strike out of said assessment-roll the charge against his property described in his objections in excess of $1,000; which motion was denied; to which action of the court the said objector, Lombard, then and there duly excepted.

And thereupon the said Lombard moved the court to strike out of said assessment-roll the whole amount charged against his said property in excess of $3,000; which said motion the court denied; to which action of the court the said Lombard then and there duly excepted.

And thereupon all the said motions and legal objections having been disposed of, the said cause came on to be tried upon the objections triable by jury; and thereupon it was stipulated in open court by the petitioners and by said objectors that the said [illegible] should be submitted to the court for trial without a jury upon the said issues and upon the same evidence in all respects which has been offered upon the said motions and legal objections as hereinbefore set forth, without recalling witnesses or introducing or recalling or offering the said testimony, the same to be treated as having been offered upon the said issues.

Which was all the evidence offered on the said hearing.

422 And thereupon the objectors contended that it was shown by the said evidence that the property of the objectors and of each of them, severally, was assessed more than its proportionate share of the cost of the said improvement; but said objections were overruled, and the court found the issues for the petitioners; to which action of the court the said objectors then and there duly excepted.

And thereupon the said objectors moved the court for a new trial of said cause, and filed their motion in writing; which said motion is as follows:

"Now come the objectors, represented by Wilson, Moore & McIlvaine, and move the court for a new trial of the said cause and to set aside his findings therein for the following reasons:

1st. For each of the reasons stated in the several motions and objections heretofore filed by the said objectors.

2nd. For that the said finding is not in accordance with the evidence.

3rd. For that the said finding is not according to law.

4th. For that the said finding is not authorized by the proceedings in the cause.

5th. For that the court admitted improper evidence offered by the petitioner and refused to strike the same out of the record.

6th. For other reasons."

Which said motion was denied; to which action of the court the said objectors then and there duly excepted.

And thereupon the said objectors moved the court in arrest of judgment upon all the grounds stated in their objections
423 to confirmation on file and in the said motion for new trial, and upon the grounds stated in the said motions to dismiss, to recast, and to strike out, as above set forth; which motion the court denied; to which action of the court the objectors then and there duly excepted.

And thereupon the court, on June 10th, A. D. 1898, entered its order of confirmation, which order is the same as that contained in the transcript of record of this cause, and is omitted in this place by agreement of parties; to the entry of which said judgment the objectors then and there duly excepted.

Thereupon the objectors prayed an appeal from the said judgment to the supreme court of Illinois, which appeal was granted upon the filing of a joint appeal bond in the penal sum of five hundred dollars ($500), as many of said objectors as should not elect to join in said bond being allowed to file their several bonds in the respective sums of two hundred and fifty dollars ($250) each, all bonds and security to be approved by the clerk of the court, said bonds and bill of exceptions to be filed within forty (40) days from the entry of the said judgment; and because the said motion and things do not fully appear of record in said cause the said objectors have prepared and tendered this their bill of exceptions, and pray that the same may be signed and sealed by the court; which is accordingly done this 14th day of July, A. D. 1898.

WILLIAM T. HODSON, [SEAL.]
*Presiding Judge of the said Court.*

O K.
H. S. MECARTNEY, *For Petitioner.*

424 STATE OF ILLINOIS, }
*County of Cook,* } ss:

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true, correct, and complete transcript of the record in the matter of the application of the West Park Commissioners for confirmation of the assessment for improving Douglas Park boulevard against the property of Josiah Lombard *et al.*,

represented by Wilson, Moore & McIlvaine, and described in the objection filed herein (except bill of exceptions, the original bill of exceptions being by stipulation incorporated herein and made part of this transcript of the record)—gen. No., 15232—all of which appears from the record and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chi-
[SEAL.] cago, in said county, this 22nd day of September, A. D. 1898.

PHILIP KNOPF,
*Clerk of the County Court.*

Clerk's costs, transcript, $7.20.
Paid.

PHILIP KNOPF, *Clerk.*

425 In the Supreme Court of Illinois.

E. A. CUMMINGS ET AL., Appellants,
*vs.*
WEST CHICAGO PARK COMMISSIONERS, Appellees.
} Appeal from the County Court of Cook County.

*Assignment of Errors.*

Now come E. A. Cummings, Lambert Tree, Anna J. Tree, Josiah L. Lombard, W. H. Doble, J. N. Vance, Francis J. Dougherty, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael Reilly, Thomas W. Reilly, and Matilda C. Reilly, appellants herein, by Wilson, Moore & McIlvaine, their attorneys, and say that in the record and proceedings and in rendering the judgment herein there is manifest error in this, to wit:

1. The court erred in overruling each of the objections of said objectors to the confirmation of said assessment upon the property owned by said objectors.

2. The court erred in holding that the preliminary requirements of the statute had been complied with by petitioners, and particularly that a petition of abutting owners need not be shown,
426 and also that the ordinance of March, 1893, need not be recited in the petition.

3. The court erred in overruling the objection that the assessment upon the property of objectors exceeds the proportionate share of the cost of the improvement equitably and fairly chargeable upon said property.

4. The court erred in ruling that said assessment and proceeding

to confirm the same *is* not in violation of the 14th amendment to the Constitution of the United States.

5. The court erred in overruling the objection that there was no valid ordinance in existence authorizing said assessment and improvement at the time said improvement was actually completed, and that therefore said improvement and assessment were not authorized by any statute of the State of Illinois, and an imposition of a charge for said improvement would be without process of law and in violation of the 14th amendment to the Constitution of the United States.

6. The court erred in overruling the objection that as the present proceeding and assessment are based on a statute passed in 1895, after the improvement was actually completed, said proceeding and assessment are void as being in contravention of the 14th amendment to the Constitution of the United States.

7. The court erred in overruling the objection that the statute of 1895, upon which this proce-ding and assessment are based, is in contravention of section 1 of the 14th amendment to the Constitution of the United States.

8. The court erred in denying the motion of said objectors to cancel and annul said assessment.

427 10. The court erred in refusing to strike out of the assessment-roll the amount included therein in excess of the actual cost of the improvement.

11. The court erred in refusing to strike out of the assessment-roll the amount assessed against the property of objectors in excess of the amount charged against said property by the original order of confirmation entered at the June term, 1893.

12. The court erred in refusing the motion of objectors to recast the assessment-roll so as to distribute the cost of the improvement in accordance with the benefits accruing therefrom.

13. The court erred in refusing to strike out from the roll, on the motion of objector Lombard, the amount assessed against his property in excess of $1,000.

14. The court erred in refusing to strike from said roll, on the motion of objector Lombard, the amount charged against his property in excess of $3,000.

15. The court erred in admitting improper evidence on behalf of petitioner, and in refusing to strike the same from the record.

16. The judgment of the court was contrary to the evidence.

17. The judgment of the court was contrary to law.

18. The court erred in denying appellants' motion for a new trial.

19. The court erred in confirming said assessment against the property of appellants and each of them.

20. The court erred in denying appellants' motion in arrest of judgment.

428 All of which appellants are ready to verify. Wherefore they and each of them pray that said judgment may be reversed, set aside, and for naught held.

| | |
|---|---|
| E. A. CUMMINGS, | HELEN M. JAMISON, |
| LAMBERT TREE, | AGNES G. REILLY, |
| ANNA J. TREE, | CHARLES J. REILLY, |
| JOSIAH L. LOMBARD, | JOSEPHINE T. REILLY, |
| W. H. DOBLE, | MARY C. REILLY, |
| J. N. VANCE, | HELEN C. REILLY, |
| FRANCIS J. DOUGHERTY, | MICHAEL A. REILLY, |
| MICHAEL REILLY, JR., | THOMAS W. REILLY, |
| GEORGE V. REILLY, | MATILDA C. REILLY, |

By WILSON, MOORE & McILVAINE,
*Attorneys for Appellants.*

429 And afterwards, to wit, on the 21st day of October, A. D. 1898, certain proceedings were had and orders made and entered of record as follows:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— ——, appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee, —— ——, having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

430 At a supreme court begun and held at Springfield on Tuesday, the 6th day of December, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 21st day of December, A. D. 1898, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL.
*vs.*
WEST CHICAGO PARK COMMISSIONERS. } No. —. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the county court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed,
and that this cause be remanded to the county court of Cook
431 county for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the court that the said appellants recover of and from the said appellees their costs by them in this behalf expended in due course of law.

432 At a supreme court begun and held at Springfield on Tuesday, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 7th day of February, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL.
*vs.*
WEST CHICAGO PARK COMMISSIONERS. } No. —. Appeal from County Court, Cook.

And now, on this day, comes the said appellants and moves the court to strike from the files the petition for rehearing filed herein by the appellees.

433 Be it remembered, to wit, on the 9th day of February, A. D. 1899, the same being one of the days of the term of court

aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } No.—. Appeal from County Court, Cook.

Now, on this day, this cause coming on to be heard upon the petition of the appellee for a rehearing herein, and the court being now duly advised in the premises, it is considered and ordered by the court that said petition for a rehearing be allowed.

434 And afterwards, to wit, on the 22nd day of February, A. D. 1899, certain proceedings were had and orders entered as follows, to wit:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

And now, on this day, comes Mary Prescott and moves the court for leave to file briefs; which motion is by the court granted.

435 EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that a rehearing has been allowed herein, and appellee hath filed herein briefs and arguments of counsel in support of the petition herein and entered motion to affirm the judgment and for costs, and the said appellant- having entered motion to reverse said judgment and for costs, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

436 At a supreme court begun and held at Springfield on Tuesday, the 3rd day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 13th day of October, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

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| EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. | No. —. | Appeal from County Court, Cook. |

And now, on this day, this cause having been argued by counsel, and the court having diligent-y examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error:

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said ap-
437 pellee recover of and from the said appellants its costs by it in this behalf expended, and that it have execution therefor.

438 At a supreme court begun and held at Springfield on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the 13th day of October, 1899, the opinion of the court was filed in the words and figures following, to wit:

E. A. CUMMINGS ET AL. vs. WEST CHICAGO PARK COMMISSIONERS. } No. —. Error to —. Appeal from County Court, Cook.

439 Docket No. R. H. 13. Agenda 76, northern div., Feb., '99.

E. A. CUMMINGS ET AL. v. WEST CHICAGO PARK COM'RS.

Mr. Justice BOGGS delivered the opinion of the court:

This is an appeal from a judgment confirming a special assessment for the improvement of Douglas boulevard, extending from Garfield park south and east to Douglas park. A former proceeding to levy an assessment was before us under the titles of Culver *v.* People, 161 Ill., 89; Farrell *v.* Town of West Chicago, 162 *id.*, 280; Connor *v.* Town of West Chicago, 162 *id.*, 287, and White *v.* Town of West Chicago, 164 *id.*, 196. By the decisions in those cases the proceedings were set aside and the judgment of confirmation reversed. The present petition was then filed, based upon a new ordinance, and this was brought before us in West Chicago Park Com'rs *v.* Farber, 171 Ill., 146. Since the reversal of the judgment in that case there has been a hearing, at which the assessment-roll was confirmed.

At the last hearing appellants moved to dismiss the petition on the ground that the original ordinance was declared void in Culver *v.* People, *supra*, and therefore said ordinance did not provide for any special assessment which could ever become a charge upon private property, and this attempted assessment is contrary to law and in conflict with the fourteenth amendment to the Constitution of the United States. This question was decided adversely to this claim in West Chicago Park Com'rs *v.* Farber, *supra*, but it is insisted that the decision in that case was wrong. The constitution and the statutes provide for making local improvements by special assessment, and we have uniformly held that they confer no authority to make a local improvement upon some other plan, or without any provision for a special assessment, and afterward provide for payment by such assessment. The improvement is to be made by special assessment, and consequently there must be a provision for its payment by that method when it is made.

440 The liability to a special assessment must be created by the ordinance which provides for making the improvement, and such a liability is created by a provision of the ordinance that the cost of the improvement shall be paid by special assessment. The original ordinance, which was passed upon in Culver *v.* People, *supra*, provided that the improvement should be made, "and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon contiguous property abutting on said boulevard." This was a provision that the improvement should be made by special assessment, and was sufficient upon that subject. The ordinance, however, went further, and there was an attempt to create a partic-

ular assessment unknown to the law governing the park commissioners. In that attempt section 2 of the ordinance ordained as follows: "That said special assessment shall be divided into installments; that the first shall be twenty per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of six per cent. per annum." A petition was filed in the county court for the appointment of commissioners to spread an assessment, to be divided into installments, the first twenty per cent. payable on confirmation of the assessment, and the remainder in four installments, payable annually thereafter. There was no authority of law for the particular assessment provided for in the ordinance or the making or confirmation of an assessment of that character, and there was no power or jurisdiction in the court to entertain such a petition and grant the prayer thereof or render the judgment prayed for. The right to levy special assessments is derived solely from statutes, and a special statutory jurisdiction is conferred upon the county court by the statute providing for an assessment. The court may obtain jurisdiction of the subject-matter of a special assessment by the filing of a petition under some existing law calling upon the court to act. If a petition based on any existing statute were presented, the court would acquire jurisdiction over the subject; and if such jurisdiction once attached, no matter how erroneous the judgment might be, it would be binding unless reversed in a direct proceeding. In this case the
441 particular assessment provided for was without authority of law, and the ordinance was void as to such provision. The petition called upon the court to act under the void provision forbidden by the law, and the court could not under it enter any judgment for a different assessment. The court was merely asked to do something which it had no power to do in a matter not pertaining to its general jurisdiction, where jurisdiction must be derived from statute. We therefore held that the ordinance and petition did not confer jurisdiction. There remained, however, in the original ordinance the valid provision that the cost of the improvement should be paid by special assessment, and we adhere to our conclusion in West Chicago Park Com'rs *v.* Farber, *supra*, that it was a sufficient basis for the subsequent ordinance and proceeding to enforce the liability. We think the court was right in overruling the motion, based on the proposition that the original ordinance did not provide for any special assessment.

The statute under which this assessment was made contains a proviso as follows: "Provided, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer" (Hurd's Stat. 1895, p. 1088, sec. 3). The petition recites that the petitioner was requested and authorized to make the improvement by a petition in writing of the owners of a majority of the land fronting on said improvement, as required by said act. At the close of the testimony on behalf of the appellee commissioners appellants moved to dismiss the proceeding on several grounds, one of which (No. 5) was as follows:

"That no petition of the property-owners is proven, as required by the statute of 1873."

The ordinance adopted by the corporate authorities of the town of West Chicago providing for the improvement in question was received in evidence. It recited that the park commissioners had control of the boulevard to be improved and desired to improve the same and had so notified the said corporate authorities of such
town and had presented to such corporate authorities plans,
442 specifications, and estimates of the cost of the improvement, and recited further as follows: "Whereas the commissioners have submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said improvement, duly verified by their engineer; and whereas the corporate authorities of the town of West Chicago have found that said petition contains the signatures of the owners of a majority of the land fronting on said Douglas boulevard: Now, therefore, be it ordained," etc.

Exclusive jurisdiction and power to adopt ordinances providing for such improvements was conferred by law upon the said corporate authorities. The park commissioners were not, as they have been by later statutes, invested with power to adopt an ordinance, but were required to apply to the corporate authorities of the town for an ordinance under which the improvements might be made. The effect of the proviso hereinbefore quoted was to prohibit such corporate authorities from passing the ordinance in question unless petitioned to do so by the owners of a majority of the land fronting on the proposed improvement. Such a petition was a prerequisite to the power of the corporate authorities to enact the ordinance. It was, therefore, of necessity the official duty of such corporate authorities to ascertain, before assuming to act on the question of the adoption of the ordinance, whether a petition which fulfilled the requirements of the statute was before them. It appears from the recitation of the ordinance, a petition purporting to be that which the law demanded was laid before the corporate authorities, and that that body entered upon an official investigation in order to ascertain whether the petition met the requirements of the law, and the ordinance sets forth the result of such official action taken by such authorities. The ordinance recites that said corporate authorities, upon such official investigation, found the petition contained the signatures of the owners of a majority of the land fronting on said Douglas boulevard so proposed to be improved. This recitation we think properly receivable
in evidence as *prima facie* proof of the facts recited. The
443 corporate authorities of the town were, by the statute, invested with sole power in the premises, and were erected by the statute into an official body charged with the duty of acting impartially, in their official capacity, as between the park commissioners and the owners of private property which would be subject to the burden of special assessments in the event the improvement, as proposed by the park commissioners, should be carried into completion. The official duty first devolving upon the corporate authorities was to ascertain whether the owners of

a majority of the land fronting on the proposed improvement had petitioned for the improvement. They discharged that duty. The clerk of the town was, by said section 3 of the act, expressly authorized and required to keep a record of the proceedings of said corporate authorities, and record the ordinances adopted by them, to the same extent the clerk of a city or village is required and authorized to keep the records of the official acts of the city council or village board in the proceedings for making improvements to be paid for by special assessments.

On the subject of the admissibility of public writings in evidence, Mr. Greenleaf, in his work on Evidence (vol. 1, secs. 483, 493), says: "The next class of public writings to be considered consists of official registers, or books kept by persons in public office, in which they are required, whether by statute or by the nature of their office, to write down particular transactions occurring in the course of their public duties and under their personal observation. These documents, as well as all others of a public nature, are generally admissible in evidence, notwithstanding their authenticity is not confirmed by those usual and ordinary tests of truth, the obligations of an oath and the power of cross-examining the persons on whose authority the truth of the documents depends. * * *

444 In regard to these official registers, we have already stated the principles on which these books are entitled to credit, to which it is only necessary to add that where the books possess all the requisites there mentioned they are admissible as competent evidence of the facts they contain." The rule is referred to by Mr. Welty, in his work on Assessments (sec. 280), as follows: "When a petition is presented and a committee reports that it is signed by owners of a majority of frontage, and the report adopted and a proper record made of the proceedings, a *prima facie* case will be made of jurisdiction, and in all subsequent proceedings it will be presumed that the board acquired jurisdiction."

In Wells *v.* Hicks, 27 Ill., 343, we held the recitals in the record of the proceedings of the board of highway commissioners were competent to be received in evidence to show that certain notices, necessary to the jurisdiction of the commissioners, had been posted as the law required. In Shinkle *v.* McGill, 58 Ill., 422, we said: "It is made the duty of the commissioners, before determining to lay out any new road or to alter or discontinue any old one, to fix upon a time and place to hear any reasons which may be offered for or against the establishment or discontinuance of such road. Three notices of the time and place must be posted in three of the most public places in the town at least eight days previous to the time of meeting. There is no evidence of such notice in this record, except the recital in the final order establishing the road. The posting of these notices is a positive requirement of the statute and must be complied with. The question is, What is sufficient evidence of compliance?

445 The final order, signed by the commissioners and deposited with the town clerk, particularly specify that three notices were posted in three of the most public places in the town

eight days previous to the time of meeeting. As we construe the statute, there can be no higher or better evidence of the fact. * * * We think the full recital in the final order of a strict performance of the duty is sufficient to confer jurisdiction. The case of Commissioners *v.* Harper, 38 Ill., 103, is not similar to this in the facts. This court held in that case that the giving of the notice was a jurisdictional fact, which would never be presumed in a direct proceeding. In that case the facts as to the posting of the notice were not recited in the order declaring the road a public highway."

The ruling in the case of Shinkle *v.* McGill, *supra*, was approved in Frizzell *v.* Rogers, 82 Ill., 109, but in that case the record of the commissioners did not contain the recital necessary to confer jurisdiction, and there being no other proof thereof, it was ruled it did not appear the commissioners had jurisdiction to enter the order.

In Board of Supervisors *v.* Magoon, 109 Ill., 142, in disposing of the objection it was not proven the commissioners had posted the notices required by statute to authorize them to act, we said: "The commissioners recite, in the order entered at the hearing, that they met at the time and place named in the notice, and that is evidence that notice was given. (See Wells *v.* Hick, 27 Ill., 343; Frizzell *v.* Rogers, 82 *id.*, 109.) We are clearly of opinion the record shows that the highway commissioners had jurisdiction."

The rule to be deduced from what was said by Mr. Cooley in his work on Taxation (8th ed., p. 465), and by Mr. Dillon in his work on Municipal Corporations (4th ed., p. 800), is that when the
446 assent or petition of a designated number of persons is necessary to the jurisdiction of the city council or the proper authorities to take official action, the finding of the council or body that the requisite number of persons had assented or petitioned for action on the part of said council or authorities is not conclusive of the jurisdictional fact, but is sufficient in the absence of countervailing proof.

Many adjudged cases are cited by appellants as in support of their contention the recitals found in the record of the corporate authorities in the case at bar have no potency whatever as evidence that a lawful petition was presented. We have examined these authorities. It is impractical to attempt to review them. We think they may be divided into four classes: (1) Those wherein the rule is announced that a record showing merely that ultimate action was taken by an official body (not judicial in character) does not establish, even *prima facie*, that a fact necessary to the jurisdiction of the body to act existed; (2) those holding that a recital in a record of the proceedings of such a body that a jurisdictional fact existed was not conclusive of the existence of such fact, but might be made the subject of opposing testimony; (3) those where the facts recited were not sufficient to establish the jurisdictional fact; (4) those wherein it is held that on consideration of the recitals and all other testimony produced upon the point the existence of the jurisdictional fact was not maintained by the preponderance of the evidence.

We do not affirm authorities are wholly wanting to sustain the

view that recitals of the character under consideration have no evidentiary force, but we venture to assert the overwhelming weight of authority is to the contrary, and that all well considered de-
447 cisions will be found to fall within one or the other of the classes hereinbefore mentioned. In the case of Thorn v. West Chicago Park Com'rs, 130 Ill., 594 (an adjudication much relied upon by appellants), the power of the commissioners to adopt an ordinance appropriating a street for the purpose of connecting a park boulevard or driveway with other parts of the city arose for determination. It was held such power could be exercised only by the consent, in writing, of the owners of a majority of the frontage of lands or lots on such street. The park commissioners adopted an ordinance appropriating portions of Twelfth street and Ogden avenue for the purpose of connecting Douglas park with other portions of the city of Chicago. The ordinance provided for the improvement of said portions of said streets by special assessments. On the hearing of the application for the confirmation of the assessment-roll the commissioners undertook to establish the necessary consent of the owners of property on said street by producing a paper purporting to be a petition of such owners. The trial court received the petition in evidence over the objections of the objectors. This court held said petition was not competent to be received in evidence for the reason the signatures of such alleged consenting petitioners were not properly authenticated, and also because it did not appear that the alleged consenting petitioners were the owners of a majority of the land fronting on the proposed improvement. In disposing of the case it was said the fact this consent petition was acted upon by the commissioners, and that it was the duty of such commissioners, in the first instance, to determine whether the owners of a majority of the land involved had consented to the appropriation of the street, could have no effect to establish that the commissioners had jurisdiction to carry out the powers conferred by the statute.

It will be observed the commissioners in that case vol-
448 untarily elected to attempt to prove in the trial court the requisite consent that the streets might be appropriated as contemplated by the ordinance by the production of the written consents in the nature of a petition in writing. The trial court held such written petition made a *prima facie* case for the commissioners. The objectors appealed. This court found the writing so produced was wholly insufficient to authorize the commissioners to act, and declared the fact the commissioners were required in the first instance to determine for themselves whether the requisite number of property-holders had consented to the proposed appropriation of the streets, and that said commissioners had determined they had jurisdiction to act from an inspection and consideration of the petition, could have no effect as presumptions in favor of the authority of the commissioners to adopt the ordinance. The commissioners having voluntarily produced as evidence a petition as constituting their authority to act, and such petition proving to be wholly insufficient to sustain such claim, it would have been beyond reason to hold that the jurisdiction of the commissioners could be

established and the judgment appealed from affirmed on the ground they considered the petition to be sufficient and had acted upon it in that view. The decision cannot be regarded as the declaration of this court that the recitals of fact of the commissioners in an ordinance that the requisite petition had been presented could not be availed of in the trial court as *prima facie* proof of the truth of the facts recited. We think the recital in such an ordinance of the finding of the corporate authorities that a preliminary fact necessary to confer jurisdiction and power on them to act existed is sufficient *prima facie* evidence of the existence of such fact. If the truth of the recital be challenged by testimony having a controverting tendency, it becomes an issue of fact, and the burden rests upon the commissioners to sustain the truth of the recital by a preponderance of all the testimony bearing upon the point.

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There is no force in the insistence the facts so recited are insufficient to show the requisite petition was before the said corporate authorities. True, the prayer of the petition is not recited. It is recited that the park commissioners desired to improve the boulevard, and had delivered to the corporate authorities plans, specifications, and estimates of the cost of the proposed improvements, together with a petition of the owners of a majority of the land fronting on said improvement, and that the corporate authorities determined the petition contained the signatures of the owners of the majority of the land fronting on said proposed improvements. The proviso of the statute making a petition necessary is that "no improvement shall be made or constructed except upon the petition of the owners of a majority of the land fronting on the proposed improvements." The recital is as broad as the statute, and the context discloses with unmistakable certainty that the petition was that which the statute required should be filed. Whether the improvements should be paid for out of the general tax fund, or wholly or in part by special assessment or special taxation, was wholly for the corporate authorities to determine. The manner of raising the fund was not a matter to be referred to in the petition, hence no recital as to the prayer of the petition in that respect was necessary.

The plans and specifications adopted by the ordinance provided that a strip sixty feet in width on each side of the boulevard should be improved, the intervening space being a parkway. The strips to be improved were parts of the same general boulevard, and would be connected by intersecting streets. The corporate authorities were justified in regarding the entire enterprise as but one and a single improvement. City of Springfield *v.* Green, 120 Ill., 269; Church *v.* People, 179 *id.*, 205.

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The evidence was properly held insufficient to show that, as was claimed, a large sum included in the assessment was expended in defraying the cost of improving the parkway which intervened between the strips the ordinance provided should be improved.

Prior to the adoption of the ordinance a "gravel roadway" had been constructed along the boulevard. This roadway was located

within the limits of the strip to be improved on the side of the boulevard upon which the property of some of the appellants abutted. Whether the property so adjacent to this gravel road should be regarded as having received as great benefit from the improvement made under the ordinance as other property which abutted on the other side of the highway was the subject to which the testimony of a number of witnesses was devoted. The testimony was not harmonious. We incline to agree with the trial court that no distinction in the matter of benefits ought to be made, under the evidence, because of the previous existence of the gravel roadway.

We do not think the appellant Lombard has any just ground of complaint as to the amount assessed against his lots. In the judgment under the prior void ordinance the benefits to his property were assessed at the sum of $1,000. The appellant Lombard, in his objections, says this assessment of $1,000 was by an agreement of the parties, and that afterwards a subsequent agreement was entered into that he should pay the appellees the sum of $2,000, making a total of $3,000 to be paid by him. The benefit to his property was assessed at $3,800. It seems from the testimony the commissioners claimed a building line had been established on
451 Lombard's property which restricted the erection of buildings thereon within fifty feet of the line of the boulevard. His lots were but ninety-two feet, or thereabout, in depth, and but about forty-two feet remained available for buildings, and the assessment of benefits in the sum of $1,000 was based upon the alleged existence of such building restrictions. It appeared that Lombard subsequently filed a petition under the burnt-records act to establish title to the premises, and made the park commissioners parties defendant for the purpose of procuring a decree declaring the property free from such building line. A decree was entered in that proceeding by consent, so far as it touched upon that question. The arrangement was, Lombard's property should be assessed $2,000 and the building line should be placed at ten feet from the margin of the boulevard. Subsequently the decree was vacated as to the park commissioners and a final decree entered declaring the property to be free from any building restrictions whatever. The court correctly held the property of the objector Lombard was subject to assessment in the amount it should be found to have been benefited by the improvement, without regard to the former judgments or agreements, for the reason all of such judgments and agreements were avoided by the rendition of the decree, at the instance of said Lombard, relieving his lots from all restrictions whatever as to the location of buildings thereon.

Believing the record to be free from error, the judgment appealed from is affirmed.

Judgment affirmed.

452 And afterwards, to wit, on the 10th day of November, A. D. 1899, there was filed in said cause a certain petition and order in the words and figures following:

In the Supreme Court of Illinois, to the October Term, A. D. 1899.

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| EDMUND A. CUMMINGS ET AL., Appellants, *vs.* WEST CHICAGO PARK COMMISSIONERS, Appellees. | Appeal from County Court, Cook County. |

To the chief justice of the supreme court of the State of Illinois:

The undersigned petitioners, J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert and Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, who are the appellants in the above-entitled cause, respectfully represent that in the records of said cause they interposed in the court below objections based upon the fourteenth amendment of the Constitution of the United States, which objections were overruled and decided against the appellants; that on their appeal in this court they raised and argued the same questions which were decided against them. They desire to prosecute a writ of error from the Supreme Court of the United States to review the decision of this court in said cause, and respectfully pray that the writ of error thereon may be directed by your honor, and that the same may be made a supersedeas, and that the amount of the supersedeas bond may be fixed and determined.

Respectfully submitted.

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| HELEN M. JAMIESON, | J. L. LOMBARD, |
| AGNES G. REILLY, | E. A. CUMMINGS, |
| CHARLES J. REILLY, | W. H. DOBLE, |
| JOSEPHINE T. REILLY, | J. N. VANCE, |
| MARY C. REILLY, | FRANCIS J. DOUGHERTY, |
| HELEN C. REILLY, | LAMBERT TREE, |
| MICHAEL A. REILLY, | ANNA J. TREE, |
| THOMAS W. REILLY, AND | MICHAEL REILLY, JR., |
| MATILDA C. REILLY, | GEORGE V. REILLY, |

By N. G. MOORE, *Their Sol'r.*

WILSON, MOORE & McILVAINE,
*Counsel for Petitioners.*

453 In the Supreme Court of the United States of America, October Term, A. D. 1899.

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| E. A. CUMMINGS ET AL., Plaintiffs in Error, *vs.* WEST CHICAGO PARK COMMISSIONERS, Defendants in Error. | No. —. Writ of Error to the Supreme Court of Illinois. |

*Assignment of Errors.*

Afterward, to wit, on the fifth Monday of October, in this term, before the justices of the Supreme Court of the United States, in the city of Washington, come the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, plaintiffs in error, by Messrs. Wilson, Moore & McIlvaine, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that—

First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and of each of them.

Second. The county court of Cook county should have dismissed the petition for confirmation of the said assessment on the motion of plaintiffs in error on the ground that upon its face the record was insufficient to support the said assessment, and also on
454 the further ground that in view of the evidence before the court the same appeared to be insufficient in law, and the said supreme court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the county court of Cook county had jurisdiction to confirm the assessment appealed from upon the property of the plaintiffs in error and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by the ordinance and proceeding originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after completion of the work.

Sixth. If the court was right in holding that the provision in the ordinance of March, 1893, for a special assessment to pay for said improvement had any validity, then the court erred in denying plaintiffs in error and each of them the benefit of the judgment of the June term, 1893, confirming the assessment then before the court.

Seventh. As to plaintiff in error Lombard, the court erred in denying him the benefit of his contract with the defendants in error, fixing the amount of the assessment on his property.

Eighth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Ninth. That by the record aforesaid it appears that the
455 judgment aforesaid was given for the said The West Chicago Park Commissioners against the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, whereas, by the law of the land, the said judgment ought to have been given for the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly against the said West Chicago Park Commissioners, and the said J. L. Lombard, E. A. Cummings W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly pray the judgment aforesaid may be reversed, annulled, and held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

WILSON, MOORE & McILVAINE,
*Counsel for Plaintiffs in Error.*

456 In the Supreme Court of Illinois, October Term, A. D. 1899.

E. A. CUMMINGS ET AL., Appellants,
*vs.*
WEST CHICAGO PARK COMMISSIONERS, Appellees.
} Appeal from County Court, Cook County.

*Order.*

Upon motion of Messrs. Wilson, Moore & McIlvaine, attorneys for appellants, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500.00).

JAMES H. CARTWRIGHT,
*Chief Justice.*

November 6, 1899.

457 And afterwards, to wit, on the 15th day of November, A. D. 1899, there was filed in said cause a certain bond in the words and figures following:

Know all men by these presents that we, J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, as principals, and Edward S. Judd, as surety, are held and firmly bound unto the West Chicago Park Commissioners in the sum of five hundred dollars ($500.00); for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this tenth day of November, A. D. 1899.

The condition of the above obligation is such that whereas, on the 13th day of October, A. D. 1899, a judgment of affirmance was rendered by the supreme court of the State of Illinois, being in the October, 1899, term of said court, in a certain cause therein pending entitled on the docket of said court "Cummings, *et al. vs.* The West Chicago Park Commissioners," in which said proceeding said principal obligors were appellants from a judgment rendered by the county court of Cook county, Illinois, in the nature of an order confirming a special assessment levied by said appellees upon lots and lands of said appellants, in and by which said judgment of said county court and said supreme court said principal obligors claim that rights asserted by them under the Constitution of the United States were denied them; and whereas said principal obligors have sued out a writ of error from the Supreme Court of the United States to review said judgment of affirmance, and have prayed that the same be made a supersedeas:

458 Now, if the principal obligors above named shall prosecute their said writ of error to effect and if they fail to make their plea good shall answer all damages and costs, then this obligation to be void; otherwise to remain in full force and effect.

JOSIAH LOMBARD. [SEAL.]
E. A. CUMMINGS. [SEAL.]
W. H. DOBLE, [SEAL.]
By N. G. MOORE, *His Attorney-in-fact.*
J. N. VANCE, [SEAL.]
By E. A. CUMMINGS, *His Att'y-in-fact.*
FRANCIS J. DOUGHERTY, [SEAL.]
By N. G. MOORE, *His Att'y-in-fact.*
MICHAEL REILLY. [SEAL.]
GEO. V. REILLY, [SEAL.]
By JOHN J. REILLY, *His Att'y-in-fact.*
HELEN M. JAMIESON, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*

THOMAS W. REILLY, [SEAL.]
By J. REILLY, *His Att'y-in-fact.*
AGNES G. REILLY, [SEAL.]
By J. REILLY, *Her Att'y-in-fact.*
CHAS. J. REILLY, [SEAL.]
By J. REILLY, *His Att'y-in-fact.*
JOSEPHINE T. REILLY, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*
MARY C. REILLY, [SEAL.]
By JOHN J. REILLY, His *Att'y-in-fact.*
HELEN C. REILLY, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*
459 MICHAEL A. REILLY, [SEAL.]
By JOHN J. REILLY, *His Att'y-in-fact.*
LAMBERT TREE & ANNA J. TREE, [SEAL.]
By HOWARD G. GREY, *Their Att'y-in-fact.*
MATILDA C. REILLY, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*
EDWARD S. JUDD. [SEAL.]

Approved by me this 11th day of November, A. D. 1899.
JAMES H. CARTWRIGHT,
*Chief Justice of the Supreme Court of Illinois.*

460 In the Supreme Court of the United States, October Term, A. D. 1899.

CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } No. 461.

*Stipulation as to Printing of Record.*

It is hereby stipulated between the plaintiffs in error, by their attorneys, and the defendants in error, by their attorney, that in printing the record in the above-entitled cause the clerk shall omit therefrom the following parts of the record:

1. The whole of the oral testimony of Edmund A. Cummings.
2. The whole of the oral testimony of George Birkhoff, Jr.
3. The whole of the oral testimony of Henry B. Fargo.
4. The whole of the oral testimony of Christian F. Schultz.
5. The whole of the oral testimony of Josiah L. Lombard. (But the judgment of confirmation offered in evidence in connection with the testimony of Josiah L. Lombard and while he was on the stand is not to be omitted.)
6. The whole of the oral testimony of Nathan G. Moore.
7. The whole of the oral testimony of George W. Dorr; also the plat produced by Mr. Dorr and used as a part of his testimony (but none of the original documents offered in evidence at the close of Mr. Dorr's testimony are to be omitted, but the same are to be printed in full).

8. The oral testimony of Maggie B. Magee.
9. The whole of the oral testimony of J. W. Mott.
10. The whole of the oral testimony of Oscar F. Brady
11. The whole of the oral testimony of George F. Talty.

461 12. The whole of the oral testimony of Francis A. Barnes.
13. The oral testimony of William L. Hoerber.
14. The whole of the oral testimony of Dillon B. Hutchinson.
15. The whole of the oral testimony of Charles D. Cole, and also the plat produced by Mr. Cole as a part of his evidence.

All the remainder of the said record, excepting only the said fifteen items above mentioned, is to be printed.

The plaintiffs in error hereby state, in pursuance of rule 10 of the Supreme Court, that they expect to rely on each and all of the assignments of error which have been attached to the record filed in this cause, and that in their judgment the matters above directed to be omitted from the record are not necessary for the consideration thereof or any of them.

Chicago, Ill., January 26th, 1900.

JOHN P. WILSON,
WILLIAM B. McILVAINE,
*Counsel for Plaintiffs in Error.*
FRANCIS A. RIDDLE,
*Counsel for Defendant in Error.*

462 [Endorsed:] File No., 17,575. Supreme Court U. S., October term, 1899. Term No., 461. J. L. Lombard *et al.*, pl'ffs in error, *vs.* The West Chicago Park Commissioners. Stipulation to omit parts of record in printing. Filed Jan'y 29, 1900.

Endorsed on cover: File No., 17,575. Illinois supreme court. Term No., 461. J. L. Lombard, E. A. Cummings, W. H. Doble, *et al.*, plaintiffs in error, *vs.* The West Chicago Park Commissioners. Filed November 24, 1899.